

STATE OF MICHIGAN
IN THE SUPREME COURT

ATLANTIC CASUALTY INSURANCE
COMPANY,

Plaintiff-Appellant,

v

GARY GUSTAFSON,

Defendant, Appellee

and

ANDRW AHO,

Defendant.

MSC No. _____
COA No. 325739-L
Lower Court No. 14-000055-CK
(Ontonagon County)

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PLAINTIFF-APPELLANT ATLANTIC CASUALTY INSURANCE COMPANY'S
APPLICATION FOR LEAVE TO APPEAL

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STATEMENT IDENTIFYING ORDER APPEALED
AND RELIEF REQUESTED

Plaintiff-Appellant seeks leave to appeal from the Michigan Court of Appeals opinion dated May 26, 2016. **(Exhibit 4)**

Pursuant to MCR 7.303(B)(1) and MCR 7.303(B)(5)(a), Plaintiff-Appellant requests that this Court grant leave to appeal and reverse the Court of Appeal's erroneous ruling and affirm the trial court's Order granting Plaintiff-Appellant's summary disposition motion. This Application is timely filed pursuant to MCR 7.305(C)(2)(a).

STATEMENT OF QUESTION INVOLVED

- I. DID THE COURT OF APPEALS ERR IN RULING THAT THE CONTRACTOR EXCLUSION IN PLAINTIFF-APPELLANT'S INSURANCE POLICY DOES NOT APPLY TO THE PROPERTY OWNER IN THIS CASE BECAUSE THE MEANING OF THE PHRASE "ANY PROPERTY OWNER" IN THE DEFINITION OF CONTRACTOR IS AMBIGUOUS?

Plaintiff-Appellant states – Yes.

Defendant-Appellee states – No.

**STATEMENT OF REASONS WHY APPEAL SHOULD
BE GRANTED AND SUMMARY OF ARGUMENTS**

This Declaratory Judgment lawsuit involves an insurance coverage dispute about whether the insurance policy issued by Plaintiff-Appellant, Atlantic Casualty Insurance Company (hereinafter "Atlantic Casualty") provides coverage to its insured, Defendant-Appellee Gary Gustafson (hereinafter "Insured") for a tort lawsuit filed by Defendant Andrew Aho (hereinafter "Homeowner"). The Homeowner was injured on his property when he was struck in the eye by a piece of wood that was propelled by a brush hog machine that was being operated by the Insured's employee to clear brush from the property. The Homeowner hired the Insured to perform some landscaping and drainage work on his property and was watching the Insured's employee clearing the brush when the accident occurred. These facts are not in dispute.

Atlantic Casualty issued a Commercial General Liability insurance policy to the Insured's business which was in effect at the time of the accident (**Exhibit 2**).

The Homeowner filed a tort lawsuit against the Insured in the Ontonagon County Circuit Court (**Exhibit 1**). The Insured tendered defense of the lawsuit to Atlantic Casualty which denied coverage because the Homeowner was a "property owner" within the meaning of the "Exclusion For Injury To Employees, Contractors, And Employees of Contractors" which states in pertinent part:

**EXCLUSIONS/LIMITATIONS-COMBINATION ENDORSEMENT-
CONTRACTORS**

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

* * *

**EXCLUSION OF INJURY TO EMPLOYEES,
CONTRACTORS AND EMPLOYEES OF CONTRACTORS**

Exclusion e. **Employer's Liability of Coverage A. Bodily Injury and Property Damage Liability** (Section I-Coverages) is replaced by the following:

This insurance does not apply to:

* * *

- (ii) **"bodily injury" to any "contractor" for which any insured may become liable in any capacity; ...**

* * *

This exclusion applies to all claims and "suits" by any person or organization for damages because of "bodily injury" to which this exclusion applies including damages for care and loss of services.

This exclusion applies to any obligation of any insured to indemnify or contribute with another because of damages arising out of "bodily injury" to which this exclusion applies, including any obligation assumed by any insured under any contract.

* * *

As used in this endorsement, "contractor" shall include but is not limited to any independent contractor or subcontractor of any insured, any general contractor, any developer, **any property owner**, any independent contractor or subcontractor of any general contractor, any independent contractor or subcontractor of any developer, any independent contractor or subcontractor of any property owner, and any and all persons working for and or providing services and or materials of any kind for these persons or entities mentioned herein.

All other terms and conditions remain unchanged.
(Emphasis added). ***Exhibit 2, Combination Endorsement, p 1,2, & 4 of 10.***

Atlantic Casualty filed a separate action in the Ontonagon County Circuit Court for a declaratory judgment that the policy does not provide the Insured with coverage for the Homeowner's tort claim because the Homeowner is a property owner within the meaning of the contractor exclusion. The trial court granted Atlantic Casualty's motion for summary disposition finding that the contractor exclusion applies to the Homeowner's tort claim and; therefore, Atlantic Casualty does have a duty to defend or

indemnify the Insured in the tort lawsuit (**Exhibit 3**).

The Insured filed a Claim of Appeal with the Court of Appeals. On May 26, 2016, the Court of Appeals issued a published opinion reversing the trial court's summary disposition order based on the conclusion that the phrase "any property owner" in the aforesaid exclusion is ambiguous under the facts of this case (**Exhibit 4**).

Atlantic Casualty filed a timely Application for Leave to Appeal from the Court of Appeals' opinion which is erroneous because its contrary to the language in the exclusion and based on a misapplication of the law that governs the interpretation of an insurance policy. The Court of Appeals relied on the case of *Turano v Pellaton*, 2015 CON Super LEXIS 146 which applied Connecticut law to interpret the phrase "any property owner" in the same exclusion in the case at bar. Connecticut law requires that the language of the headings and sub-headings in the insurance policy govern the meaning and interpretation of the terms they precede (i.e., the terms in the body of the exclusion). Based on this principle of Connecticut law, the court in *Torano* held that the exclusion did not apply to the injured property owner's claim because the heading of the exclusion does not specifically refer to a property owner. This interpretative principle and ruling is contrary to Michigan law which requires that an insurance policy be "read and interpreted as a whole to harmonize and give effect to each of its provisions." *Fragner v American Community Mutual Ins. Co.*, 199 Mich App 357, 540; 502 NW2d 350 (1993).

The Court of Appeals based its conclusion that the phrase "any property owner" is ambiguous on the mistaken belief that Atlantic Casualty admitted the exclusion is ambiguous based on the statement by it's counsel that the Insured's overly broad

interpretation would produce an absurd result constitutes an admission that the exclusion is ambiguous. This acknowledgement is simply recognition that any interpretation that produces an absurd result.

The Court of Appeals erroneously rejected application of *ejusdem generis* which the trial court applied to interpret the meaning of any "property owner" in the context of the other entities/persons listed in the definition of contractor in the exclusion. Applying this principle, the trial court concluded that the phrase "any property owner" in the context of the other entities listed in the definition applies to those persons and entities generally found on a construction site which would include the owner of the property where the project is being performed (ie, anyone who has a commercial interest in the project).

The Court of Appeals concluded that the doctrine of *noscitur a sociis* is the appropriate principle to apply to determine the meaning of "property owner" in the context of the entities and individuals listed in the exclusion. The Court of Appeals correctly assumed that the trial court would have reached the same conclusion if it had applied this rule of interpretation to determine the meaning of "property owner", which would include any property owner that has a commercial interest in the project. However, the Court of Appeals disagreed that this would be a correct interpretation from application of this interpretative principle and concluded that the "relationship between the categories listed in the exclusion are those who are being compensated, or who otherwise have a commercial interest, for being on the job site." The Court of Appeals concluded that this interpretation does not include the homeowner of the property because the homeowner is not being compensated and is different from "someone, or

some entity who is commercially involved in the work being done". Atlantic Casualty disagrees with this logic and conclusion which is contrary to the plain meaning of the exclusion and the applicable principles of contract interpretation in Michigan and seeks leave to appeal from the Court of Appeals decision.

STANDARD OF REVIEW

The proper interpretation of an insurance policy and whether an ambiguity exists are questions of law which are reviewed *de novo*. *Archambo v Lawyers Title Ins. Corp.*, 466 Mich 402, 646 NW2d 170 (2002). *Farm Bureau Mutual Ins. Co v Nikkel*, 460 Mich 558; 596 NW2d 915 (1999).

STATEMENT OF FACTS

The facts of this case are not in dispute. The Insured is a sole-proprietor doing business as Gustafson Excavating and Septic Systems which was hired by the homeowner to perform landscaping and drainage work on the homeowner's property (**Exhibit 1**). Atlantic Casualty issued a Commercial General Liability Insurance policy to the Insured's business (**Exhibit 2**).

The homeowner was watching the Insured's employee clearing brush from the Homeowner's property with a motorized machine (brushhog) when a piece of wood was propelled by the brushhog and struck the homeowner in the eye, causing severe injury.

The Homeowner filed a tort lawsuit against Insured in Ontonagon County Circuit Court (Case No. 2013-000021-CZ). (**Exhibit 1**)

Atlantic Casualty concluded that the policy did not provide coverage for this claim pursuant to terms of the "Exclusion for injury to Employees, Contractors, and Employees of Contractors" combination endorsement and denied coverage.

Atlantic Casualty filed a separate action in the Ontonagon County Circuit Court seeking a declaratory judgment that policy does not provide coverage to Insured for the Homeowner's claim.

THE ATLANTIC CASUALTY POLICY

The Policy generally provides "Bodily Injury & Property Damage Liability" coverage to Insured subject to the applicable terms and conditions in the policy. Attached as **Exhibit 2** is a certified copy of the Policy, including the endorsements/exclusions in effect on the date of the accident.

The "Common Policy Declarations" page for the policy contains the following general statement about the coverage provided by the policy:

In return for payment of the premium, and subject to all terms of this policy, we agree with you to provide the insurance as stated in this policy.

The "Bodily Injury & Property Damage Liability" coverage is generally described in the Insuring Agreement for Coverage Part A which states in pertinent part as follows:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

* * *

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, **we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply...** (Emphasis added.) *Exhibit 2, CGL Coverage Form, p 1 of 14.*

The "Bodily Injury & Property Damage Liability" coverage in Coverage Part A is subject to the exclusions in Coverage Part A and the **Combination Endorsement** (AGL-CO (8/09)) which states in pertinent part:

**EXCLUSIONS/LIMITATIONS-COMBINATION ENDORSEMENT-
CONTRACTORS**

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

* * *

**EXCLUSION OF INJURY TO EMPLOYEES,
CONTRACTORS AND EMPLOYEES OF CONTRACTORS**

Exclusion e. **Employer's Liability of Coverage A. Bodily Injury and Property Damage Liability (Section I-Coverages)** is replaced by the following:

This insurance does not apply to:

* * *

- (ii) **"bodily injury" to any "contractor" for which any insured may become liable in any capacity; ...**

* * *

This exclusion applies to all claims and "suits" by any person or organization for damages because of "bodily injury" to which this exclusion applies including damages for care and loss of services.

This exclusion applies to any obligation of any insured to indemnify or contribute with another because of damages arising out of "bodily injury" to which this exclusion applies, including any obligation assumed by any insured under any contract.

* * *

As used in this endorsement, "contractor" shall include but is not limited to any independent contractor or subcontractor of any insured, any general contractor, any developer, **any property owner**, any independent contractor or subcontractor of any general contractor, any independent contractor or subcontractor of any developer, any independent contractor or subcontractor of any property owner, and any and all persons working for and or providing services and or materials of any kind for these persons or entities mentioned herein.

All other terms and conditions remain unchanged.

(Emphasis added). *Exhibit 2, Combination Endorsement, p 1,2, & 4 of 10.*

I. LAW AND ARGUMENT

I. THE COURT OF APPEALS ERRONEOUSLY RULED THAT THE CONTRACTOR EXCLUSION IN THE POLICY IS AMBIGUOUS BECAUSE THE MEANING OF THE PHRASE “ANY PROPERTY OWNER” IN THE CONTRACTOR DEFINITION IS SUSCEPTIBLE TO MORE THAN ONE REASONABLE INTREPRETATION.

A. Principles of Contract Construction

Insurance policies are subject to the same principles of construction as any other type of contract. *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). The construction and interpretation of an insurance contract is a question of law for the Court. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348; 596 NW2d 190 (1999). When interpreting an insurance policy, the function of the court is to determine the intent of the parties and to enforce it accordingly. *Century Surety Co v Charron*, 230 Mich App 79; 583 NW2d 486 (1998). **An insurance contract should be read and interpreted as a whole to harmonize and give effect to each of its provisions.** *Fragner v American Comm Mut Ins Co*, 199 Mich App 537, 540; 502 NW2d 350 (1993); *Auto Club Group Ins Co v Marzonie*, 447 Mich 624; 527 NW2d 760 (1995). **A court should not read ambiguities into a policy where none exist.** *Michigan Millers Mut Ins Co v Bronson Plating Co*, 445 Mich 558, 567; 519 NW2d 864 (1994). **Words and phrases that appear in bold print or quotations are to be interpreted in accordance with the special definitions in the policy.** *Allstate Ins Co v Freeman*, 432 Mich 656, 443 NW2d 734 (1989). The fact that a policy does not define a term does not render the policy ambiguous. *Henderson, supra*. Any terms used in an insurance

policy which are not clearly defined should be given their commonly used meaning. *Group Ins Co v Czopek*, 440 Mich 590, 596; 489 NW2d 444 (1992). If an ambiguity does exist, which cannot be resolved by the trier of fact, then and only then should the provision be construed in favor of the insured. *Twichel v MIC General Ins Corp*, 469 Mich 524; 676 NW2d 616 (2004); *Farmers Ins Exchange v Kurzmann*, 257 Mich App 412; 668 NW2d 199 (2003); *Fire Ins Exchange v Diehl*, 450 Mich 678, 687; 545 NW2d 602 (1996). **"[Insurance contract] terms should not be considered in isolation[,] and [insurance contracts] are to be interpreted to avoid absurd or unreasonable conditions and results."** *Hastings Mut Ins Co v Safety King, Inc*, 286 Mich App 287; 778 NW2d 275 (2009) citing *Knox v Knox*, 337 Mich 109, 120; 59 NW2d 108 (1953), quoting 12 Am Jur, p 848; *Port Huron Area School Dist v Port Huron Ed Ass'n*, 120 Mich App 112, 116; 327 NW2d 413 (1982).

Where a provision in an insurance policy is unambiguous, it should be enforced as written. *Sherman-Nadiv v Farm-Bureau General Ins Co*, 282 Mich App 75; 761 NW2d 872 (2008); *City of Grosse Pointe Park v Michigan Municipal Liability and Property Pool*, 473 Mich 188; 702 NW2d 106 (2005); *Auto-Owners Ins Co v Churchman*, 440 Mich 560; 489 NW2d 431 (1992). Exclusions limiting the scope of coverage are to be read with the insuring agreement and independent of other exclusions and should be strictly construed. *State Farm Mut Auto Ins Co v Roe*, 226 Mich App 258, 263; 573 NW2d 628, 631 (1997); *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 333; 632 NW2d 525 (2001). **Where there is a conflict between an endorsement and form provisions in an insurance contract, the terms of the endorsement control.** *Smart v New Hampshire Ins Co*, 148 Mich App 724; 304 NW2d 772 (1985); *Besic v Citizens Ins Co of the Midwest*, 290 Mich App 19, 26; 800 NW2d 93, 97 (2010), *app den* 489 Mich 895 (2011).

The plain and unambiguous language of the contractor exclusion in the Combination Endorsement excludes coverage for "bodily injury" to **any "contractor"** for which any insured may become liable in any capacity. The endorsement includes a special definition for the word "contractor" which includes **"any property owner"**. This

special definition governs its meaning. See **Exhibit 2**.

The insured/homeowner argued that the exclusion is ambiguous and the policy illusory because the phrase “any property owner” would include anyone which effectively means that no one would qualify for coverage. This overly broad interpretation ignores the context of the definition and would produce an absurd result which is contrary to the principles of law which require the terms be read and interpreted as a whole to harmonize each of its provisions and to avoid absurd or unreasonable results. *Fragner v American Comm Mut Ins Co*, supra; *Hastings Mutual Ins. Co. v Safety King, Inc.*, supra.

The trial court correctly concluded that the meaning of the phrase “any property owner” in this definition must be determined in the context of the entire definition as a whole. The phrase “any property owner” in the definition is included in a list of other entities. The trial court correctly applied the principle of *ejusdem generis* (a Latin term meaning “of the same kind”) to determine the meaning of “any property owner” in the context of the other persons and entities listed in the definition. The trial court concluded that the other persons and entities listed in the definition are generally and reasonably found on a construction site which includes the property owner where the construction project is being performed. (**Exhibit 3**). Based on this conclusion, the trial court ruled that the policy does not provide coverage to the Insured for the homeowner’s claim because he is the owner of the property where the work was being performed. The trial court rejected the Defendants’ “hyper-technical reading of the phrase because it would lead to absurd and unreasonable conclusion that neither party would have intended when making the contract”. (**Exhibit 3**).

The trial court also rejected the Defendants' argument that Atlantic Casualty's interpretation of the exclusion would render the policy illusory based on its conclusion that "any property owner" would not exclude coverage for any bodily injury claim by any passerby, trespasser, invitee, licensee or adjoining property owner that is not associated with the construction project (**Exhibit 3**).

The trial court's ruling is consistent with the principles of law that govern the interpretation of an insurance policy, which requires that the terms be read as a whole to harmonize and give effect to each of the provisions. *Fragner, supra*. Insurance contracts should be "construed so as to give effect to every word or phrase as far as practicable." See *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003) citing *Hunter v. Pearl Assurance Co., Ltd*, 292 Mich. 543, 545, 291 N.W. 58 (1940), quoting *Mondou v. Lincoln Mut. Cas. Co.*, 283 Mich. 353, 358-359, 278 N.W. 94 (1938). Courts should avoid any interpretation that would render any portion of the insurance contract nugatory or surplusage. *Klapp, supra*.

The Policy is not intended to provide liability coverage to persons or entities who are working on the project or a property owner who hires the contractors/workers involved to work on their property.

The Insured's argument essentially asks the court to interpret the Policy based on the alleged "reasonable expectations" of the Insured that it provides coverage for this claim. The "rule of reasonable expectations" has no application to the interpretation and construction of insurance contracts. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 60-63; 664 NW2d 776 (2003).

When viewed in the context of the entire definition, the term "any property owner"

clearly does not contemplate an owner of personal property or property that has no connection with the work project. The only reasonable interpretation of “any property owner,” within the context of the entire definition, means the property owner where the work is performed and the owners of any equipment used in the project. The exclusion cannot be construed to provide coverage to the insured for the homeowner’s claim because it would nullify the phrase “any property owner” and render it meaningless.

The Court of Appeals reversed the trial court’s order and ruled that the exclusion is ambiguous because: (1) Atlantic Casualty’s attorney admitted that the Defendants’ interpretation of the phrase “any property owner” would produce an absurd result which the Court of Appeals erroneously believes is an admission that the exclusion is ambiguous, (2) “any property owner” refers to any person or entity who is commercially involved in the work and does not include the owner of the property where the work is being done.

The statements by Atlantic Casualty’s attorney that the Insureds’ overly broad interpretation of the phrase “any property owner” would produce an absurd result does not constitute an admission that the exclusion is ambiguous. This statement is merely a recognition of the principal of contract interpretation that the policy be read in a manner to avoid an absurd or unreasonable result. *Fragner, supra, Hastings Mutual, supra.*

The Court of Appeals concluded that the trial court incorrectly applied the principle of *ejusdem generis* to determine the meaning of the phrase “any property owner” because it does not fall at the end of a list of specific terms. The Court of Appeals concluded that the principle of *noscitur a sociis* is the appropriate interpretative principle to apply when several words “are associated in a context

suggesting that the words have something in common” and should be assigned a similar meaning. Atlantic Casualty argues that both interpretative principles provide the same conclusion.

The Court of Appeals agreed that it is reasonable to conclude that the persons and entities described in the contractor definition are commonly involved in work on done on a commercial project but believes this does not include the owner of the property where the work is being done which renders the exclusion ambiguous. Atlantic Casualty disagrees with this conclusion.

The Court of Appeals correctly assumed that the trial court would have reached the same conclusion that the “related meanings” of the individuals/entities listed in the definition include those that are likely found on a construction site if it had applied the doctrine of *noscitur a sociis*. However, the Court of Appeals disagreed with this interpretation and concluded that the relationship between the entities listed in the definition are those “who are being compensated, or who otherwise have a commercial interest for being on the job site”. This conclusion is a distinction without a difference from the trial court’s conclusion that the entities listed in the definition are “generally found on a construction site” which includes those entities that have a commercial interest in the project (i.e., contractors, developers and the property owner). The homeowner in the case at bar has a commercial interest in the work that was being performed on his property because he hired the Insured to do the work.

Atlantic Casualty fails to understand the logic of the Court of Appeals conclusion that the meaning of the phrase “any property owner” in the definition is ambiguous based on application of either *ejusdem generis* or *noscitur a sociis*. The Court of

Appeals relied on the *Turano* case to support this conclusion which applied Connecticut law to determine the meaning of this same exclusion. The plaintiff in *Turano* hired a contractor to waterproof his basement. In the course of performing the work, the contractor removed the bottom step from the basement stairway. The plaintiff was injured while using the stairway and brought suit against the contractor which was covered by a policy issued by Atlantic Casualty which contains the same exclusion in the case at bar. Atlantic Casualty denied coverage in *Turano* because the plaintiff was a “property owner” within the meaning of the exclusion.

The Court in *Turano* held that the exclusion did not apply to the injured property owner’s claim because “the language employed in the heading is not broad enough to encompass the situation of a customer/property owner.” The court based its conclusion on a rule of law in Connecticut that “our appellate courts in somewhat routine fashion have looked to headings and subheadings in contracts to construe terms that they perceive”. This is not the law in Michigan which requires that an insurance policy be “read and interpreted as a whole to harmonize and give effect to each of its provisions.” *Fragner*, *supra*. Furthermore, the court’s holding in *Turano* ignores the special definition for the term “contractor” which governs the meaning of contractors used in the policy. The court in *Turano* did not conclude that the exclusion is ambiguous. In short, the Court of Appeals reliance on the *Turano* case is misplaced.

The Court of Appeals also believes the exclusion is ambiguous based on a statement by Atlantic Casualty’s attorney that the phrase “any property owner” may include the owner of equipment used on the project. The Court of Appeals seems to conclude that property owners of equipment used on the project do not have a

commercial interest in the project and/or are not typically found on a construction site which demonstrates that the exclusion is ambiguous. Atlantic Casualty disagrees with this logic. The fact that the phrase "any property owner" would cover more than one person does not render it ambiguous. The existence of more than one reasonable interpretation of an insurance clause does not render the clause ambiguous unless one operates to provide coverage and one does not. The Insured's interpretation is not reasonable because it would provide an absurd result.


RELIEF REQUESTED

Atlantic Casualty requests that this Court grant Argonaut's application for leave to appeal from the Court of Appeals' erroneous opinion and affirm the trial court's order granting summary disposition for Atlantic Casualty.

DATED: June 28, 2016

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by electronic filing at their respective e-mail addresses as disclosed by the pleadings of record herein, on the 30th day of **June, 2016**. I declare under penalty of perjury that the statement above is true to the best of my knowledge, information and belief.


Judy L. Brenay
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COURT\Application for Leave to Appeal - Supreme Ct.docx

Respectfully submitted,

WARD, ANDERSON, PORRITT,
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EXHIBIT 1

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ONTONAGON

ANDREW AHO,

FILE NO. 13-000021-CZ

Plaintiff,

JUDGE: Janis Burgess

vs.

GARY GUSTAFSON d/b/a GUSTAFSON
EXCAVATING & SEPTIC SYSTEMS,

Defendant.

HARRIS, GOYETTE & WINTERFIELD, PLC
ALAN D. PENSKAR (P-41759)
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COMPLAINT

Plaintiff Andrew Aho, by and through his attorneys, Harris, Goyette & Winterfield, PLC, by Alan D. Penskar, states for his "Complaint" as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff Andrew Aho ("Aho") reside in the County of Ontonagon.
2. Defendant Gary Gustafson ("Gustafson") operates an excavating and septic systems business under the assumed name of Gustafson Excavating & Septic Systems and is a resident of the County of Ontonagon.
3. This Court has personal jurisdiction over the parties as they are residents of the County of Ontonagon and/or regularly conduct business within the County and/or committed the underlying torts within the County.

4. This Court has subject-matter jurisdiction over this lawsuit as it seeks damages in excess of \$25,000.00 exclusive of attorney fees, costs and interest.

5. Venue is proper.

GENERAL ALLEGATIONS

6. On or about May 3, 2010, Aho hired Gustafson to perform landscaping work and brushhogging on his property located in Trout Creek.

7. To perform his work, Gustafson used a brushhog or bushhog implement which was attached to the front of a bobcat, a piece of motorized equipment. In using the equipment, the implement on the front rotates very rapidly to generate the power to shred thick brush.

8. In regularly using the brushhog in his business, Gustafson knew that pieces of debris, including wood, that are strewn about through the brush can and likely will be, on contact, sent into all directions and at high speeds.

9. However, before beginning his brushhogging, Gustafson failed to ensure that Aho was safely out of range of any debris that would be displaced. At no time did he direct Aho, for example, to move to a certain distance or go inside his home before the work started.

10. Shortly after he began, Gustafson's brushhogging did cause a wood shard to be displaced at rapid speed which struck Aho in his right eye.

11. The damage to his eye sight is extensive and ongoing.

12. Moreover, the fears of lifelong damage, even total loss of sight in that eye, continue to cause him substantial emotional distress.

13. Further, Aho has significant medical expenses arising from the injuries, likely including continuing costs well into the future.

14. Aho's lifestyle has, as expected, been significantly curtailed. His ability to hunt, golf, wood-work and undertake just about any type of physical recreation are difficult if not impossible.

15. Gustafson's actions (and inactions) were negligent and, as an actual and proximate cause, caused Aho severe injuries and substantial damages.

COUNT I
NEGLIGENCE

16. Plaintiff restates and re-alleges paragraphs 1-15 as if fully set forth herein.

17. As an experienced operator of a brushhog, Gustafson knew the risks associated with its use, including, but not limited to, that shards of wood could be displaced and flung at rapid speed and over a considerable distance.

18. Notwithstanding this experience and knowledge, Gustafson did not, before starting his work, ensure that Aho was safely out of the zone where he could be struck by one of those shards.

19. By failing to ensure Aho's safety, Gustafson breached his duty of due care owed to Aho.

20. Gustafson's breach was the proximate cause of Aho's injuries and those injuries caused and continue to cause him substantial damages.

WHEREFORE, Plaintiff Andrew Aho respectfully requests that this Court enter a Judgment in his favor and against Defendant Gary Gustafson d/b/a Gustafson Excavating & Septic Systems in whatever amount in excess of \$25,00.00 this Court deems just and equitable, in addition to attorney fees, costs, interest and exemplary damages.

COUNT II
FRAUDULENT MISREPRESENTATION

21. Plaintiff restates and re-alleges paragraphs 1-20 as if fully set forth herein.

22. Among other venues, in his advertising of his business, Gustafson represented that he was "insured" for damages that might arise from his work.

23. However, counsel for Gustafson's insurer informed Aho that his insurance failed to cover the precise situation extant in his hiring by Aho: the policy did not cover injuries to customers, like Aho, who hired Gustafson to work on their own property.

24. Considering Gustafson's work regularly involved working on a customers' own property, the misrepresentation that he had insurance was made knowingly or in reckless disregard of the truth.

25. Aho reasonably relied on Gustafson's representation as it was published in his advertising and the misrepresentation was material as brushhogging can cause injuries to, inter alia, customers.

26. Aho's reliance caused him substantial damages, as Gustafson did not maintain coverage for injuries such as those Aho suffered.

WHEREFORE, Plaintiff Andrew Aho respectfully requests that this Court enter a Judgment in his favor and against Defendant Gary Gustafson d/b/a Gustafson Excavating & Septic Systems in whatever amount in excess of \$25,000.00 this Court deems just and equitable, in addition to attorney fees, costs, interest and exemplary damages.

COUNT III
VIOLATION OF THE MICHIGAN CONSUMER
PROTECTION ACT ("MCPA"), MCL 445.901 et. seq.

27. Plaintiff restates and re-alleges paragraphs 1-26 as if fully set forth herein.

28. Aho was a consumer of Gustafson's business for household purposes and Gustafson was conducting trade or commerce in providing these services.

29. Gustafson violated multiple provisions of, including, inter alia, Sec. 1 (c); (n) and (s).

30. Gustafson violated the MCPA by representing in his published advertising that he was insured for damages he may cause in providing his services, which he was not.

31. As a consequence of Gustafson's statutory violations, Aho suffered substantial damages by not being able to recoup these damages described herein from Gustafson's insurance.

WHEREFORE, Plaintiff Andrew Aho respectfully requests that this Court enter a Judgment in his favor and against Defendant Gary Gustafson d/b/a Gustafson Excavating & Septic Systems in whatever amount in excess of \$25,000.00 this Court deems just and equitable, in addition to attorney fees, costs, interest and exemplary damages.

Dated: April 12, 2013.


ALAN D. PENSKAR (P-41759)
Attorney for Plaintiff

JURY DEMAND

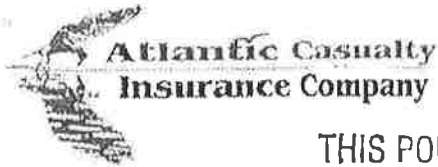
Pursuant to MCR 2.508, Plaintiff Andrew Aho respectfully requests a Trial by jury of all claims so allowable by law.

Dated: April 12, 2013.


ALAN D. PENSKAR (P-41759)
Attorney for Plaintiff

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EXHIBIT 2



COMMON POLICY DECLARATIONS

THIS POLICY IS _____% EARNED Policy Number L012000892L012000774

Renewal of Number

Item 1. Named Insured and Mailing Address:

Gary Gustafson

Rt 1 Box 122
Trout Creek

MI 49967

Item 2. Policy Period From: 12/03/2009 To: 12/03/2010 Term 365 Day(s)

12:01 A. M. Standard Time at the address of the Named Insured as stated herein

Item 3. Business Description:

Logging & Excavating

In return for the payment of the premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in this policy.

This policy consists of the following coverage parts for which a premium is indicated. Where no premium is shown, there is no coverage. This premium may be subject to adjustment.

Coverage Part(s)	Form No and Edition Date	Premium
Commercial General Liability Coverage Part		\$ 1,952.00
Property Coverage Part		\$
Equipment Breakdown Coverage		\$
Inland Marine Coverage Part		\$
Terrorism Coverage		\$
	Subtotal	\$ 1,952.00
	Tax	\$ 48.80
	Policy Fee	\$ 125.00
		\$
		\$
		\$
		\$
	Total	\$ 2,125.80

THIS INSURANCE IS WITH AN INSURER
NOT LICENSED IN MICHIGAN. IN CASE
OF INSOLVENCY, PAYMENT OF CLAIMS
MAY NOT BE GUARANTEED.

Audit Period Annual unless otherwise stated: _____

Item 4. Forms and endorsements applicable to all Coverage Parts:
See Schedule of Forms and Endorsements

Agent No.: 210012

General Agent: Cameron M. Wilson & Associates

Address: 5988 Venture Park Drive
Kalamazoo

MI 49009

Producer Code No.:

Producer Name: Borseth Agency

Producer Address: P O Box 410
Ewen

MI 49925

Countersigned 12/03/2009 sk/mw

DATE

By

COUNTERSIGNATURE

THIS COMMON POLICY DECLARATIONS AND THE SUPPLEMENTAL DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS COMPLETE THE ABOVE NUMBER POLICY.

IN WITNESS WHEREOF, this Company has caused the Policy to be signed by its President and its Secretary and countersigned by a duly authorized representative.

William B. Reynolds
President

Marianna S. Tieeman
Secretary

SCHEDULE OF FORMS AND ENDORSEMENTS

<p>POLICY NUMBER: L012000892</p>	<p>NAMED INSURED Gary Gustafson</p>																																				
<p style="text-align: center;">Form/Endorsement No./Edition Date</p> <table border="0"> <tr> <td>ACD 04-07</td> <td>COMMON POLICY DECLARATION</td> </tr> <tr> <td>ACI-GLB 07-01</td> <td>PRIVACY POLICY</td> </tr> <tr> <td>A-MEP1 01-08</td> <td>MIN EARNED PREM</td> </tr> <tr> <td>IL0017 11-90</td> <td>COMMON POLICY CONDITIONS</td> </tr> <tr> <td>IL0021 07-02</td> <td>NUCLEAR ENERGY EXCLUSION</td> </tr> <tr> <td>ACD-GL1 01-03</td> <td>GL COVERAGE DECLARATIONS</td> </tr> <tr> <td>ACD-GLS 01-02</td> <td>GL COVERAGE DECLARATIONS EXT</td> </tr> <tr> <td>CG0001 10-01</td> <td>COMMERCIAL GL COV FORM</td> </tr> <tr> <td>CG0168 10-92</td> <td>MICHIGAN CHANGES</td> </tr> <tr> <td>CG0300 1-96</td> <td>LIABILITY INS DEDUCTIBLE</td> </tr> <tr> <td>CG2010 10-01</td> <td>ADD INS- OWNERS</td> </tr> <tr> <td>CG2173 01-08</td> <td>EXCL CERTIFIED ACTS OF TERRORISM</td> </tr> <tr> <td>AGL-CO 08-09</td> <td>CONTRACTORS COMBO ENDORSE EXCLUSIONS/LIMITATIONS</td> </tr> <tr> <td>AGL-010 01-04</td> <td>DESIGNATED OPERATIONS EXCL</td> </tr> <tr> <td>AGL-012 01-08</td> <td>PREMIUM AUDIT-DEPOSIT PREM END</td> </tr> <tr> <td>AGL-015 01-08</td> <td>CLASSIFICATION LIMITATION ENDO</td> </tr> <tr> <td>AGL-029 01-05</td> <td>TIMBER OVERCUT EXCL</td> </tr> <tr> <td>AGL-040 01-03</td> <td>PROPERTY DAMAGE EXCL</td> </tr> </table>		ACD 04-07	COMMON POLICY DECLARATION	ACI-GLB 07-01	PRIVACY POLICY	A-MEP1 01-08	MIN EARNED PREM	IL0017 11-90	COMMON POLICY CONDITIONS	IL0021 07-02	NUCLEAR ENERGY EXCLUSION	ACD-GL1 01-03	GL COVERAGE DECLARATIONS	ACD-GLS 01-02	GL COVERAGE DECLARATIONS EXT	CG0001 10-01	COMMERCIAL GL COV FORM	CG0168 10-92	MICHIGAN CHANGES	CG0300 1-96	LIABILITY INS DEDUCTIBLE	CG2010 10-01	ADD INS- OWNERS	CG2173 01-08	EXCL CERTIFIED ACTS OF TERRORISM	AGL-CO 08-09	CONTRACTORS COMBO ENDORSE EXCLUSIONS/LIMITATIONS	AGL-010 01-04	DESIGNATED OPERATIONS EXCL	AGL-012 01-08	PREMIUM AUDIT-DEPOSIT PREM END	AGL-015 01-08	CLASSIFICATION LIMITATION ENDO	AGL-029 01-05	TIMBER OVERCUT EXCL	AGL-040 01-03	PROPERTY DAMAGE EXCL
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PRIVACY POLICY

Atlantic Casualty Insurance Company believes that personal information that we collect about our customers, potential customers, and proposed insureds (referred to collectively in this Privacy Policy as "customers") must be treated with the highest degree of confidentiality. For this reason and in compliance with the Title V of the Gramm-Leach-Bliley Act ("GLBA"), we have developed a Privacy Policy that applies. For purposes of our Privacy Policy, the term "personal information" includes all information we obtain about a customer and maintain in a personally identifiable way. In order to assure the confidentiality of the personal information we collect and in order to comply with applicable laws, all individuals with access to personal information about our customers are required to follow this policy.

Our Privacy Promise

Your privacy and the confidentiality of your business records are important to us. Information and the analysis of information is essential to the business of insurance and critical to our ability to provide to you excellent, cost-effective service and products. We understand that gaining and keeping your trust depends upon the security and integrity of our records concerning you. Accordingly, we promise that:

1. We will follow strict standards of security and confidentiality to protect any information you share with us or information that we receive about you;
2. We will verify and exchange information regarding your credit and financial status only for the purposes of underwriting, policy administration, or risk management and only with reputable references and clearinghouse services;
3. We will not collect and use information about you and your business other than the minimum amount of information necessary to advise you about and deliver to you excellent service and products and to administer our business;
4. We will train our employees to handle information about you or your business in a secure and confidential manner and only permit employees authorized to use such information to have access to such information;
5. We will not disclose information about you or your business to any organization outside our company or to third party service providers unless we disclose to you our intent to do so or we are required to do so by law;
6. We will not disclose medical information about you, your employees, or any claimants under any policy of insurance, unless you provide us with written authorization to do so, or unless the disclosure is for any specific business exception provided in the law;
7. We will attempt, with your help, to keep our records regarding you and your business complete and accurate, and will advise you how and where to access your account information (unless prohibited by law), and will advise you how to correct errors or make changes to that information; and
8. We will audit and assess our operations, personnel and third party service providers to assure that your privacy is respected.

Collection and Sources of Information

We collect from a customer or potential customer only the personal information that is necessary for (a) determining eligibility for the product or service sought by the customer, (b) administering the product or service obtained, and (c) advising the customer about our products and services. The information we collect generally comes from the following sources:

- **Submission** - During the submission process, you provide us with information about you and your business, such as your name, address, phone number, e-mail address, and other types of personal identification information;
- **Quotes** - We collect information to enable us to determine your eligibility for the particular insurance product and to determine the cost of such insurance to you. The information we collect will vary with the type of insurance you seek;
- **Transactions** - We will maintain records of all transactions with us, our affiliates, and our third party service providers, including your insurance coverage selections, premiums, billing and payment information, claims history, and other information related to your account;

- **Claims** - If you obtain insurance from us, we will maintain records related to any claims that may be made under your policies. The investigation of a claim necessarily involves collection of a broad range of information about many issues, some of which does not directly involve you. We will share with you any facts that we collect about your claim unless we are prohibited by law from doing so. The process of claim investigation, evaluation, and settlement also involves, however, the collection of advice, opinions, and comments from many people, including attorneys and experts, to aid the claim specialist in determining how best to handle your claim. In order to protect the legal and transactional confidentiality and privileges associated with such opinions, comments and advice, we will not disclose this information to you; and
- **Credit and Financial Reports** - We may receive information about you and your business regarding your credit. We use this information to verify information you provide during the submission and quote processes and to help underwrite and provide to you the most accurate and cost-effective insurance quote we can provide.

Retention and Correction of Personal Information

We retain personal information only as long as required by our business practices and applicable law. If we become aware that an item of personal information may be materially inaccurate, we will make reasonable effort to re-verify its accuracy and correct any error as appropriate.

Storage of Personal Information

We have in place safeguards to protect data and paper files containing personal information.

Sharing/Disclosing of Personal Information

We maintain procedures to assure that we do not share personal information with an unaffiliated third party for marketing purposes unless such sharing is permitted by law. Personal information may be disclosed to an unaffiliated third party for necessary servicing of the product or service or for other normal business transactions as permitted by law.

We do not disclose personal information to an unaffiliated third party for servicing purposes or joint marketing purposes unless a contract containing a confidentiality/non-disclosure provision has been signed by us and the third party. Unless a consumer consents, we do not disclose "consumer credit report" type information obtained from an application or a credit report regarding a customer who applies for a financial product to any unaffiliated third party for the purpose of serving as a factor in establishing a consumer's eligibility for credit, insurance or employment. "Consumer credit report type information" means such things as net worth, credit worthiness, lifestyle information (piloting, skydiving, etc.) solvency, etc. We also do not disclose to any unaffiliated third party a policy or account number for use in marketing. We may share with our affiliated companies information that relates to our experience and transactions with the customer.

Policy for Personal Information Relating to Nonpublic Personal Health Information

We do not disclose nonpublic personal health information about a customer unless an authorization is obtained from the customer whose nonpublic personal information is sought to be disclosed. However, an authorization shall not be prohibited, restricted or required for the disclosure of certain insurance functions, including, but not limited to, claims administration, claims adjustment and management, detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity, underwriting, policy placement or issuance, loss control and/or auditing.

Access to Your Information

Our employees, employees of our affiliated companies, and third party service providers will have access to information we collect about you and your business as is necessary to effect transactions with you. We may also disclose information about you to the following categories of person entities:

- Your independent insurance agent or broker;
- An independent claim adjuster or investigator, or an attorney or expert involved in the claim;
- Persons or organizations that conduct scientific studies, including actuaries and accountants;
- An insurance support organization;
- Another insurer if to prevent fraud or to properly underwrite a risk;
- A state insurance department or other governmental agency, if required by federal, state or local laws; or
- Any persons entitled to receive information as ordered by a summons, court order, search warrant or subpoena.

Violation of the Privacy Policy

Any person violating the Privacy Policy will be subject to discipline, up to and including termination.

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM EARNED PREMIUM

If this policy is cancelled for any reason, except at the request of the Company, you agree with us that the minimum earned premium for this policy is 25% of the total policy premium, unless otherwise indicated below. It is further agreed that such minimum earned premium is not subject to short rate or pro rata adjustment.

All premium charges for adding additional Insured and/or waiver of subrogation endorsements to this policy shall be 100% fully earned.

- ☐ 50% of the total policy premium
- ☐ 100% of the total policy premium
- ☐ ____ % of the total policy premium

IL 00 17 11 98

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and
- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

IL 00 21 07 02

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
 COMMERCIAL GENERAL LIABILITY COVERAGE PART
 FARM COVERAGE PART
 LIQUOR LIABILITY COVERAGE PART
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
 POLLUTION LIABILITY COVERAGE PART
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
 PROFESSIONAL LIABILITY COVERAGE PART
 RAILROAD PROTECTIVE LIABILITY COVERAGE PART
 UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

(1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

(1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or

on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or

(3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "Special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore pro-

cessed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";
- (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such

equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.



COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

Renewal of Number L012000774Policy No. L012000892

Named Insured and Mailing Address (No., Street, Town or City, County, State, Zip Code):
Gary Gustafson

Rt 1 Box 122
Trout Creek MI 49967

Policy Period *: From 12/03/2009 to 12/03/2010 at 12:01 A.M. Standard Time at your mailing address shown above.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

Each Occurrence Limit	\$ 1,000,000	
Damages To Premises		
Rented To You Limit	\$ 50,000	Any one premises
Medical Expense Limit	\$ 1,000	Any one person
Personal and Advertising Injury Limit	\$ 1,000,000	Any one person or organization
General Aggregate Limit	\$ 1,000,000	
Products / Completed Operations Aggregate Limit	\$ 1,000,000	

RETROACTIVE DATE (CG 00 02 ONLY)

Coverage A of this Insurance does not apply to "bodily injury" or "property damage" which occurs before the Retroactive Date, if any, shown here:
(Enter Date or "None" if no Retroactive Date applies)

DESCRIPTION OF BUSINESS AND LOCATION OF PREMISES

Form of Business:

☒ Individual ☐ Joint Venture ☐ Partnership ☐ Organization (Other than Partnership or Joint Venture)

Business Description*:

Logging & Excavating

Location of All premises You Own, Rent or Occupy:

Same

PREMIUM

Classification	Code No.	Premium Basis	Rate		Advance Premium	
			Pr/Co	All Other	Pr/Co	All Other
Excavation	94007	P 10,899 PR	28.968	63.824	\$316	\$696

See Attached ACD-GLS

Subtotal For ACD-GLS \$ 940.00

Total or Minimum Premium \$ 1,952.00

** (a) area (c) total cost (m) admission (p) payroll (s) gross sales (u) units (t) other

FORMS AND ENDORSEMENTS applying to this Coverage part and made part of this policy at time of issue +:

SEE SCHEDULE OF FORMS AND ENDORSEMENTS

Countersigned: *

By

Authorized Representative

*Entry optional if shown in Common Policy Declarations.

+Forms and Endorsements applicable to this Coverage Part omitted if shown elsewhere in the policy.

THESE DECLARATIONS AND THE COMMON POLICY DECLARATIONS, IF APPLICABLE, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

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Copyright, Insurance Services Office, Inc.

ACD-GL1 01-03

Policy Number: L012000892

LOCATION OF PREMISES

Location of All premises You Own, Rent or Occupy:
Same

PREMIUM

Classification	Code No.	Premium Basis	Rate		Advance Premium	
			Pr/Co	All Other	Pr/Co	All Other
Logging and Lumbering - including Products and/or Completed Operations subject to the General Aggregate Limit	97111	P 20,241 PR	INCL	33.731	\$NCL	\$683
Septic Tank Systems - Installation, Servicing or repair	98806	P 1,730 PR	21.813	12.637	\$38	\$22
Water Mains or Connections Construction	99946	P 1,730 PR	10.941	44.974	\$19	\$78
Additional Insured - Owners, Lessees, or Contractors	CG2010				\$	\$100
			Total for extension	Total	\$940.00	
**(a) area (c) total cost (m) admilssion (p) payroll (s) gross sales (u) units (t) other						

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

SECTION I - COVERAGES**COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY****1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" expected or intended from the standpoint of the insured.

ily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the Insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily Injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily Injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;
 - (ii) "Bodily Injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

- (i) Any insured; or
- (ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily Injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any con-

tractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily Injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

(2) A watercraft you do not own that is:

(a) Less than 26 feet long; and

(b) Not being used to carry persons or property for a charge;

- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily Injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily Injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced be-

cause "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily Injury" arising out of "personal and advertising injury".

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance ; and

- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods - Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of websites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

- e. **Athletics Activities**
To a person injured while taking part in athletics.
- f. **Products-Completed Operations Hazard**
Included within the "products-completed operations hazard".
- g. **Coverage A Exclusions**
Excluded under Coverage A.
- h. **War**
Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
 - e. All costs taxed against the insured in the "suit".
 - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.
2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

(a) Owned, occupied or used by,

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person driving the equipment; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

- (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an Insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

- (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability.

- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the Information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this Insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

(1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

(2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

- (a) Preparing, approving, or failing to prepare or approve, maps, shop draw-

ings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles, not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke,

vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall

be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

- a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and

(2) The providing of or failure to provide warnings or instructions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MICHIGAN CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

- A. The paragraph relating to prejudgment interest in SUPPLEMENTARY PAYMENTS (Section I) is replaced by the following:

Prejudgment interest awarded against the insured on that part of the judgment we pay.

- B. With respect to the DUTIES Condition (Section IV):

1. Notice given by or on behalf of the insured to our authorized agent, with particulars sufficient to identify the insured, shall be considered notice to us.
2. The last sentence of paragraph 2.b. is deleted.
3. The reference to paragraph d. is amended to read paragraph e.
4. The following is added:
 - d. Failure to give any notice required by this Condition within the time period specified shall not invalidate any claim made by you if it shall be shown not to have been reasonably possible to give notice within the prescribed time period and that notice was given as soon as was reasonably possible.

POLICY NUMBER: L012000892

COMMERCIAL GENERAL LIABILITY
CG 03 00 01 96

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEDUCTIBLE LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Coverage	Amount and Basis of Deduction PER CLAIM or PER OCCURRENCE	
Bodily Injury Liability OR	\$	\$
Property Damage Liability OR	\$ 500.00	\$
Bodily Injury Liability and/or Property Damage Liability Combined	\$	\$

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage", however caused):

- A. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.
 - B. You may select a deductible amount on either a per claim or a per "occurrence" basis. Your selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:
 - 1. **PER CLAIM BASIS.** If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:
 - a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
 - b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage"; or
 - c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages sustained by any one person because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined
 as the result of any one "occurrence".
- If damages are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a claim for such damages.
- With respect to "property damage", person includes an organization.

2. **PER OCCURRENCE BASIS.** If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:

- a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
- b. Under Property Damage Liability Coverage, to all damages because of "property damage"; or
- c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined

as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".

C. The terms of this insurance, including those with respect to:

- 1. Our right and duty to defend the insured against any "suits" seeking those damages; and
- 2. Your duties in the event of an "occurrence", claim, or "suit"

apply irrespective of the application of the deductible amount.

D. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

POLICY NUMBER: L012000892

COMMERCIAL GENERAL LIABILITY
CG 20 10 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies Insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

Steenberg Brothers Inc

P O Box 127

Bark River

MI 49807

(If no entry appears above, Information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. Section II - Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that Insured.

B. With respect to the Insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This Insurance does not apply to "bodily Injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional Insured (s) at the site of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.

2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

- a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
- b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

EXCLUSIONS/LIMITATIONS - COMBINATION ENDORSEMENT - CONTRACTORS

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

EXCLUSION – COMMUNICABLE DISEASE

We do not cover any claim, loss, costs or expense for "bodily injury", "property damage", or "personal and advertising injury" arising out of the transmission of or alleged transmission of any communicable disease.

AGL-001 1/03

EXCLUSION – LEAD-BEARING SUBSTANCE

We do not cover any claim, loss, costs or expense for "bodily injury", "personal and advertising injury" caused by plumbism (lead poisoning) or any disease or ailment caused by or aggravated by exposure, consumption or absorption of lead.

We do not cover any claim, loss, costs or expense for "property damage" arising out of the actual or alleged presence of lead in any form, including the costs of remedial investigations or feasibility studies, or to the cost of testing, monitoring, cleaning up or removal of any lead-bearing substance.

AGL-002 1/03

EXCLUSION – PUNITIVE DAMAGES

We do not cover any claim of or indemnification for punitive, exemplary and/or statutorily enhanced damages, including, but not limited to, multiple damages. If a "suit" seeking both compensatory and punitive, exemplary and/or statutorily enhanced damages, including, but not limited to, multiple damages has been brought against you for a claim covered by this policy, we will provide defense for such action. We will not have any obligation to pay for any costs, interest or damages attributable to punitive, exemplary and/or statutorily enhanced damages, including, but not limited to, multiple damages.

AGL-003 1/08

EXCLUSION – ASBESTOS OR SILICA

We do not cover any liability, claim, loss, costs or expenses for "bodily injury", "personal and advertising injury" caused by asbestosis, silicosis, mesothelioma, emphysema, pneumoconiosis, pulmonary fibrosis, pleuritis, endothelioma or any lung disease or any ailment caused by, or aggravated by exposure, inhalation, consumption or absorption of asbestos or silica.

We do not cover any liability, claim, loss, costs or expense for "property damage" due to or arising out of the actual or alleged presence of asbestos or silica in any form, including the cost of remedial investigations or feasibility studies, or to the cost of testing, monitoring, cleaning and removal of any property or substance.

AGL-004 1/08

ATLANTIC CASUALTY INSURANCE COMPANY

EXCLUSION – INDEPENDENT CONTRACTORS / SUBCONTRACTORS

You or any insured are not covered for claims, loss, costs or expense arising out of the action(s) or inaction(s) of independent contractors / subcontractors for or on behalf of any insured; or for the negligent hiring, training, supervision, direction, inspection, investigation, management or retention of independent contractors/subcontractors on behalf of any insured.

AGL-005 1/08

ROOFING LIMITATION ENDORSEMENT

We do not cover claims, loss, costs or expense arising out of "bodily injury", "personal injury" or "property damage" as a result of any operations, from initial inspection and pre-installation work to ongoing operations and including completed operations, involving any hot tar, wand, sprayed or sprayed-on material, torch or heat applications, hot membrane roofing or any membrane roofing system requiring heat for application.

AGL-009 1-08

CLASSIFICATION LIMITATION

This insurance does not apply to and no duty to defend is provided for "bodily injury", "property damage", "personal and advertising injury" or medical payments unless the "bodily injury", "property damage", "personal and advertising injury" or medical payments arise out of the classification(s) shown on the Commercial General Liability Coverage Declarations, its endorsements or supplements.

AGL-015 1-08

EXCLUSION - RAIN, SNOW AND HAIL PROPERTY DAMAGE HAZARD

We do not cover claims, loss, costs or expense due to "property damage" arising out of rain, snow, hail or any combination of these if a suitable waterproof temporary covering, able to withstand the normal elements and large enough to cover the area being worked on, has not been properly secured in place. This cover is to be put into place any time the contractor leaves the job site.

AGL-035 1-08

EXCLUSION – CLAIMS IN PROCESS

Paragraphs b. (3) , c. and d. under Insuring Agreement of Section I – Coverage A – bodily Injury and Property Damage Liability, are deleted. The following is added to 2. Exclusions under Section I – Coverage A – bodily Injury and Property Damage Liability:

1. any loss or claim for damages arising out of or related to "bodily injury" or "property damage", whether known or unknown:
 - a. which first occurred prior to the inception date of this policy; or
 - b. which is, or is alleged to be, in the process of occurring as of the inception date of this policy.
2. any loss or claim for damages arising out of or related to "bodily injury" or "property damage", whether known or unknown, which is in the process of settlement, adjustment or "suit" as of the inception date of this policy.

We shall have no duty to defend any insured against any loss, claim, "suit" or other proceeding alleging damages arising out of or related to "bodily injury" or "property damage" to which this endorsement applies.

AGL-048 1/03

ATLANTIC CASUALTY INSURANCE COMPANY

EXCLUSION - EIFS

We do not cover claims, loss, cost or expense for "Bodily injury", "Property damage" or "Personal and Advertising injury" arising from the design, manufacture, construction, fabrication, preparation, installation, application, maintenance or repair, including remodeling, service, correction, or replacement, of an exterior insulation and finish system (commonly referred to as synthetic stucco or EIFS) or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system.

For the purpose of this endorsement, an exterior insulation and finish system means an exterior cladding or finish system used on any part of any structure, and consisting of:

- a) a rigid or semi-rigid insulation board made of expanded polystyrene or other materials, and
- b) the adhesive and/or mechanical fasteners used to attach the insulation board to the substrate, and
- c) a reinforced base coat, and
- d) a finish coat providing surface texture and color.

AGL-050 1/07

EXCLUSION – MOLD, BACTERIA, VIRUS AND ORGANIC PATHOGEN LIABILITY

The following supercedes the terms and conditions of this policy. This insurance does not apply:

- 1. to any alleged "bodily injury", "property damage", "personal and advertising injury";
- 2. to any alleged damages for devaluation of property or for the taking, use or acquisition or interference with the rights of others in property or air space;
- 3. to any loss, cost or expense, including but not limited to fines, penalties and attorney fees, arising out of any governmental direction or request, or any private party or citizen action, that an insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize "organic pathogens", or
- 4. to any litigation or administration procedure in which an insured may be involved as a party;

arising directly, indirectly, or in concurrence or in any sequence out of actual, alleged or threatened existence, exposure to, discharge, dispersal, release or escape of "organic pathogens", whether or not such actual, alleged or threatened existence, discharge, dispersal, release or escape is sudden, accidental or gradual in nature.

In addition, this insurance does not apply to any alleged "bodily injury", "property damage", "personal and advertising injury", loss, cost or expense including but not limited to fines, penalties and attorney fees, arising out of or related to any form of "organic pathogens", whether or not such actual, alleged or threatened existence, exposure to, discharge, dispersal, release or escape is negligently or intentionally caused by any person or entity and whether or not the liability of any insured is alleged to be direct or vicarious. This exclusion also applies whether or not such injury, damage, devaluation, cost or expense is expected or intended from the standpoint of any insured.

"Organic pathogen" means any organic irritant or contaminant, including but not limited to mold, fungus, bacteria or virus, including but not limited to their byproducts such as mycotoxin, mildew, or biogenic aerosol.

All other terms and conditions remain unchanged.

AGL-054 1/05

ATLANTIC CASUALTY INSURANCE COMPANY

EXCLUSION OF INJURY TO EMPLOYEES, CONTRACTORS AND EMPLOYEES OF CONTRACTORS

Exclusion e. **Employer's Liability of Coverage A. Bodily Injury and Property Damage Liability (Section I – Coverages)** is replaced by the following:

This insurance does not apply to:

- (i) "bodily injury" to any "employee" of any insured arising out of or in the course of:
 - (a) Employment by any insured; or
 - (b) Performing duties related to the conduct of any insured's business;
- (ii) "bodily injury" to any "contractor" for which any insured may become liable in any capacity; or
- (iii) "bodily injury" sustained by the spouse, child, parent, brother or sister of any "employee" of any insured, or of a "contractor", as a consequence of any injury to any person as set forth in paragraphs (i) and (ii) of this endorsement.

This exclusion applies to all claims and "suits" by any person or organization for damages because of "bodily injury" to which this exclusion applies including damages for care and loss of services.

This exclusion applies to any obligation of any insured to indemnify or contribute with another because of damages arising out of "bodily injury" to which this exclusion applies, including any obligation assumed by an insured under any contract.

With respect to this endorsement only, the definition of "Employee" in the DEFINITIONS (Section V) of CG0001 is replaced by the following:

"Employee" shall include, but is not limited to, any person or persons hired, loaned, leased, contracted, or volunteering for the purpose of providing services to or on behalf of any insured, whether or not paid for such services and whether or not an independent contractor.

As used in this endorsement, "contractor" shall include but is not limited to any independent contractor or subcontractor of any insured, any general contractor, any developer, any property owner, any independent contractor or subcontractor of any general contractor, any independent contractor or subcontractor of any developer, any independent contractor or subcontractor of any property owner, and any and all persons working for and or providing services and or materials of any kind for these persons or entities mentioned herein.

All other terms and conditions remain unchanged.

AGL-055 8/05

ATLANTIC CASUALTY INSURANCE COMPANY

LIMITATION – DUTY TO DEFEND

Where there is no coverage under this policy, there is no duty to defend any insured. We are entitled to all rights of reimbursement from you or any insured or indemnitee for sums paid under this policy if it is determined that there is no coverage under the terms, conditions or exclusions of this policy.

Our determination regarding a defense obligation under this policy may be made on evidence or information extrinsic to any complaint or pleading presented to us.

We have the right but not the duty to defend. The preceding sentence only applies to those qualifying as an additional insured by way of an additional insured endorsement.

AGL-056 1/08

TOTAL POLLUTION EXCLUSION ENDORSEMENT

Exclusion f. under paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury and Property Damage Liability is replaced by the following:

This insurance does not apply to:
f. Pollution

(1) "Bodily injury" or "property damage" which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or

(b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, clean up, removing, containing, treating, detoxifying, or neutralizing or in any way responding to, or assessing the effects of "pollutants".

The Definition of "Pollutants" in Section V – Definitions is deleted and replaced by the following:

"Pollutants" means solid, liquid, gaseous, or thermal irritant or contaminant or all material for which a Material Safety Data Sheet is required pursuant to federal, state or local laws, where ever discharged, dispersed, seeping, migrating or released, including onto or into the air or any air supply, water or any water supply or land, including but not limited to petroleum, oil, heating oil, gasoline, fuel oil, carbon monoxide, industrial waste, acid, alkalis, chemicals, waste, treated sewage; and associated smoke, vapor, soot and fumes from said substance. Waste includes material to be recycled, reconditioned, or reclaimed.

AGL-064 11/07

ATLANTIC CASUALTY INSURANCE COMPANY

EXCLUSION – CHROMATED COPPER ARSENATE (CCA)

We do not cover any claim, loss, costs or expense for "bodily injury" or "personal and advertising injury" or any ailment caused by, or aggravated by exposure, inhalation, consumption or absorption of Chromated Copper Arsenate (CCA).

We do not cover any claim, loss, costs or expense for "property damage" due to or arising out of the actual or alleged presence of Chromated Copper Arsenate (CCA) in any form, including the cost of remedial investigations or feasibility studies, or to the cost of testing, monitoring, cleaning or removal of any property or substance.

AGL-065 1/05

MAXIMUM AVAILABLE LIMIT OF INSURANCE ENDORSEMENT

When two or more coverage forms, coverage parts or policies issued by us:

This endorsement applies to all coverage forms or coverage parts and policies providing bodily injury and property damage liability and/or damage to premises rented to you and/or medical payments and/or products-completed operations and/or personal and advertising injury coverage.

For any loss, claim, cost or expense arising out of one occurrence:

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same occurrence, the maximum per occurrence Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy.

This endorsement applies to any insured including but not limited to any additional insured.

AGL-066 8/05

EXCLUSION – EXPECTED OR INTENDED

Exclusion 2.a. of the Commercial General Liability Coverage Form is deleted in its entirety and replaced by the following:

- a) "Bodily injury" or "property damage" expected or intended from the standpoint of any insured.

AGL-068 01/07

EXCLUSION – SNOW/ICE REMOVAL

We do not cover any claim, loss, costs or expense for "bodily injury" or "property damage" arising from "your" operations or completed operations for the removal of snow and/or ice. This exclusion does not apply if "you" remove snow or ice from any premises whose address is shown on the policy that you own or rent.

AGL-069 01/07

ATLANTIC CASUALTY INSURANCE COMPANY

EXCLUSION – WORK IN CALIFORNIA, SOUTH CAROLINA OR NEVADA

We do not cover any claim, loss, costs or expense for "bodily injury", "property damage" or "personal injury or advertising" arising from any construction or construction related operations, or construction or construction related completed operations in the states of California, South Carolina or Nevada.

AGL-070 01/08

TERMS, CONDITIONS, AND PREMIUM

This policy's terms, conditions and premiums are subject to change in accordance with our rates and rules in effect at the time of the renewal, continuation or anniversary.

AGL-071 01/07

EXCLUSION – EARTH MOVEMENT

We do not cover any claim, loss, costs or expense for "bodily injury" or "property damage" or "personal and advertising injury" arising out of, caused by, resulting from, attributable to or contributed to, aggravated by, or related to earthquake, landslide, mud flow, subsidence, settling, slipping, falling away, shrinking, caving in, shifting, eroding, rising, heaving, tilting or any other movement of land, earth or mud.

AGL-072 1/07

MENTAL INJURY EXCLUSION

We do not cover any claim, loss, costs or expense arising out of emotional distress, mental anguish, humiliation, mental distress, mental injury, mental suffering, worry, annoyance, anxiety, inconvenience, depression, dissatisfaction, or shock to the nervous system or any physical manifestation of any of the foregoing, or any similar injury unless it arises out of actual physical injury to that person.

AGL-073 01/07

OUR RIGHT TO SELECT COUNSEL

We have the right to select counsel to represent any insured.

In the event that you or any insured or indemnitee are entitled by law to select independent counsel to defend you or any insured or indemnitee at the Company's expense and you or any insured or indemnitee elect to select such counsel, the attorney's fees and all other litigation expenses we must pay are limited to the rates we actually pay to counsel we retain in the ordinary course of business in the defense of similar claims in the community where the claim arose or is being defended.

AGL-074 11/07

ATLANTIC CASUALTY INSURANCE COMPANY

EXCLUSION – CLAIMS IN PROCESS

The following exclusion is added to 2. Exclusions under Section I - Coverage B Personal and Advertising Injury Liability:

1. any loss or claim for damages arising out of or related to "Personal and Advertising Injury Liability", whether known or unknown:
 - a. which first occurred prior to the inception date of this policy; or
 - b. which is, or is alleged to be, in the process of occurring as of the inception date of this policy.
2. any loss or claim for damages arising out of or related to "Personal and Advertising Injury Liability", whether known or unknown, which is in the process of settlement, adjustment or "suit" as of the inception date of this policy.

We shall have no duty to defend any insured against any loss, claim, "suit" or other proceeding alleging damages arising out of or related to "Personal and Advertising Injury Liability" to which this endorsement applies.

AGL-076 12-07

AMENDED DEFINITIONS AND USE OF EXTRINSIC EVIDENCE

Section V – DEFINITIONS; 3. is amended by adding this paragraph to the Commercial General Liability Form:

We may look to extrinsic evidence outside of the facts plead by any claimant to determine whether a lawsuit is seeking "Bodily Injury."

Section V – DEFINITIONS; 14. h. is added to the Commercial General Liability Form:

- h. We may look to extrinsic evidence outside of the facts plead by any claimant to determine whether a lawsuit is seeking "Personal and Advertising Injury."

Section V – DEFINITIONS; 17. c. and d. is added to the Commercial General Liability Form:

- c. "Property Damage" does not include any cost or expense to repair, replace, or complete any work to any property that you (or any insured) are otherwise obligated to repair, replace or complete pursuant to the terms of any contract with any person.
- d. We may look to extrinsic evidence outside of the facts plead by any claimant to determine whether a lawsuit is seeking "Property Damage."

AGL – 077 1-08

LIMITATION – IMPORTED DRYWALL

We do not cover any claim, loss, costs or expense for "bodily injury" or "property damage" arising out of "your product" or "your work" resulting from any paper-coated, gypsum-filled paneling, which may be known by various names including, but not limited to drywall, wall board, sheetrock, gypsum board, or plasterboard that was not manufactured in the United States or Canada.

AGL-079 06-09

ATLANTIC CASUALTY INSURANCE COMPANY

EXCLUSION – NEW ENTITIES

Paragraph 4. of WHO IS AN INSURED (Section II) does not apply.

CG 21 36 01 96

EMPLOYMENT – RELATED PRACTICE EXCLUSION

A. The following exclusion is added to paragraph 2., Exclusions of Coverage A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages):

This insurance does not apply to:
"Bodily Injury" to:

- 1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- 2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- 1) Whether the insured may be liable as an employer or in any other capacity; and
- 2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

B. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage B – Personal And Advertising Injury Liability

This insurance does not apply to:
"Personal and advertising injury" to:

- 1) A person arising out of any:
 - a) Refusal to employ that person;
 - b) Termination of that person's employment; or
 - c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person or
- 2) The spouse, child, parent, brother or sister of that person as a consequence of "personal injury" to that person at whom any of the employment-related practices described in paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- 1) Whether the insured may be liable as an employer or in any other capacity; or
- 2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

CG 21 47 7/98

ATLANTIC CASUALTY INSURANCE COMPANY

EXCLUSION – VOLUNTEER WORKERS

A. Paragraphs 2.a. Exclusions of Section I – Coverage C – Medical Payments is replaced by the following:

We will not pay expenses for "bodily injury":

- a. To any insured

B. Paragraphs 2.a. and 2.b. of Section II – Who Is An Insured are replaced by the following:

- 1. Each of the following is also an insured:

- a. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to conduct of your business. However, none of these "employees" is an insured for:

- (1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" or while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph (1) (a) above;
- (c) For which there is any obligation to share damages with or repay someone who must pay damages because of the injury described in Paragraphs (1) (a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

- (2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", any partner or member (if you are partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee"), or any organization while acting as your real estate manager.

C. Definition 20. "volunteer worker" of Section V – Definitions is deleted.

CG 21 66A 01/07

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**EXCLUSION - DESIGNATED OPERATIONS (ALL HAZARDS IN CONNECTION WITH
SUBWAY, TUNNEL, BRIDGE AND DAM CONSTRUCTION OR OPERATION)**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

We do not cover claims, loss, costs or expense from "bodily injury", "property damage" or "personal and advertising injury," arising out of pile driving, caisson, cofferdam, subway, tunnel, bridge, dam, subaqueous, or dredging construction or operations.

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PREMIUM AUDIT OR INSPECTION - DEPOSIT PREMIUM

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE

Conditions (Section IV), Commercial General Liability is amended as follows:

5. Premium Audit

Paragraph " b." is deleted and replaced by the following:

- b) Premium shown in this Coverage Part as advance premium is a minimum and deposit premium. It shall be determined based on an estimate of your exposures for the policy year. At the close of each audit period, or after expiration or cancellation of this policy, or during the policy term, we may, at our discretion, compute the policy premium based on your actual records, a telephone inspection or survey, physical inspection or survey, self-audit or an audit conducted of your actual records. If we do this computation and the premium developed is greater than the advance premium, the additional premium is due and payable. Additional premium may be generated by additional exposure(s) including but not limited to increases in the rating basis or classification changes. If any additional premium is not paid promptly the policy may be canceled at our discretion. If the total earned premium for the policy period is less than the advance premium, then the advance premium is the minimum premium and not subject to further adjustment.

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CLASSIFICATION LIMITATION

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to and no duty to defend is provided for "bodily injury", "property damage", "personal and advertising injury" or medical payments unless the "bodily injury", "property damage", "personal and advertising injury" or medical payments arise out of the classification(s) shown on the Commercial General Liability Coverage Declarations, its endorsements or supplements.

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION- OVERCUT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY

We do not cover any claim, loss, costs or expense for "property damage" arising out of "over-cutting of timber" or other vegetation by any "insured" or any contractors working for or acting on behalf of any "insured".

The following definition is added to **Section V - Definitions**:

"Over-cutting of timber" means the cutting, felling, logging or destruction of timber or other vegetation not owned, leased or under contract or agreement to log or lumber by or for you whether such contract or agreement is written or oral.

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

EXCLUSION - PROPERTY DAMAGE (FORESTRY SERVICES PROVIDED BY OR ON BEHALF OF ANY INSURED)

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE

We do not cover any claim, loss, costs or expense for:

1. "property damage"
 - a) due to fire; or
 - b) however caused, to any vehicle while being loaded or unloaded; with respect to this exclusion, "while being loaded or unloaded" means the handling of property:
 - 1) After it is moved from the place where it is accepted for movement into or onto a vehicle;
 - 2) While it is on a vehicle; or
 - 3) While it is being moved from a vehicle to the place where it is finally delivered.
2. "bodily injury," "property damage" or "personal and advertising injury" arising out of the ownership, storage, use or application of herbicides, insecticides or pesticides for which you are required to be licensed or certified by any government unit or agency.
3. "bodily injury," "property damage" or "personal and advertising injury" arising out of an error, omission, defect, or deficiency in any test performed, or an evaluation, consultation or advice given by or in behalf of any "insured"; or the reporting of or reliance upon any such test, evaluation, consultation or advice.

EXHIBIT 3

FILED

JAN 9 2015

STATE OF MICHIGAN
32ND JUDICIAL CIRCUIT
ONTONAGON COUNTY

ATLANTIC CASUALTY INSURANCE
COMPANY, A Foreign Corporation,
Plaintiff

ONTONAGON COUNTY
CIRCUIT COURT CLERK

FILE: O-2014-000055-CZ

V

GARY GUSTAFSON and
ANDREW AHO,

Hon. Janis M. Burgess
Presiding Circuit Court Judge

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OPINION GRANTING MOTION FOR SUMMARY DISPOSITION
AND DENYING COUNTER MOTION FOR SUMMARY
DISPOSITION

BACKGROUND OF THE CASE

The facts of this case are not in dispute. Defendant Gary Gustafson d/b/a Gustafson Excavating and Septic Systems [Gustafson] was hired by Defendant Andrew Aho [Aho] to perform drainage work around a pond located on property owned by Aho. Plaintiff Atlantic Casualty Insurance Company [Atlantic Casualty] provided Commercial General Liability Coverage for Gustafson's business. That policy is the subject of this declaratory judgment action.

While Gustafson's company performed contracted work on Aho's property Defendant Aho was injured. A Gustafson employee was shredding thick brush with a brushhog and Aho was observing his work. A piece of debris flew out from the brushhog and struck Aho in the eye, causing severe bodily injury including some vision loss. The injury was immediately reported to

Gustafson's insurance agent, who assured Gustafson that the matter was covered by his policy. Upon review by Atlantic Casualty, however, the claim was denied as not within the coverage provided.

Defendant Aho filed a personal injury lawsuit against Defendant Gustafson in Ontonagon County Circuit Court case number 2013-000021-CZ, based on these facts. Gustafson tendered the defense to Atlantic Casualty. Atlantic Casualty seeks a declaratory judgment from this court on whether the policy in question provides coverage or a duty to defend Defendant Gustafson against the Aho claim.

The parties are in agreement that this is purely a question of law for the court to determine by means of the summary disposition motion (and counter motion) presently before the court pursuant to MCL 2.116 (C)(10) and MCL 2.116 (I).

STANDARD OF REVIEW

MCR 2.116(C)(10)

In deciding a motion brought under this court rule, the court must consider affidavits and other documentary evidence, in addition to the pleadings submitted by the parties. *Spiiek v Dep't of Transp*, 456 Mich 331; 572 NW2d 201 (1998). If the moving party's submissions meet its initial burden of showing that there are no genuine issues as to any material fact, the nonmoving party may not rely on mere allegations or denials in its pleading, but must set forth specific facts showing that a genuine issue of material fact does exist, preventing the grant of summary disposition. *McCart v J Walter Thompson, Inc.* 347 Mich 109; 469 NW2d 284 (1991).

MCR 2.116(I)

In considering whether to grant summary disposition under this court rule, the court must consider all of those materials required in MCR 2.116(G)(5) or MCR 2.119(E)(2): oral testimony, depositions, affidavits, pleadings,

admissions, or other documentary evidence. Should the court determine that the party opposing the summary disposition motion is the party entitled to judgment under the requirements of this court rule, then this subsection permits the court to enter judgment in the nonmoving party's favor.

PROCEDURAL BACKGROUND

MCR 2.116, Summary Disposition, states in relevant part:

(B)(1). A party may move for . . . judgment on all or part of a claim in accordance with this rule. . . .

(C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds upon which it is based:

(10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

(G)(3) Affidavits, depositions . . . or other documentary evidence in support of the grounds asserted in the motion are required

(a) when the grounds asserted do not appear on the face of the pleadings,

or

(b) when judgment is sought based on sub rule (C)(10).

(I)(1) If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay.

(2) If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.

(5) If the grounds asserted are based on subrule (C)(10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified.

(J)(1) If a motion under this rule is denied, or if the decision does not dispose of the entire action or grant all the relief demanded, the action must proceed to final judgment. . . .

(2) A party aggrieved by a decision of the court entered under this rule may:

- (a) seek interlocutory leave to appeal . . .
- (b) claim an immediate appeal as of right if the judgment entered by the court constitutes a final judgment . . . or
- (c) proceed to final judgment and raise errors of the court committed under this rule [if any] in an appeal taken from final judgment.

ANALYSIS OF THE CASE

The parties agree that the underlying facts of this case are not in dispute. In essence, they agree that the court should render summary disposition – but they disagree as to in whose favor judgment should be granted. At issue in this case is the interpretation of the terms of the Commercial General Liability Policy that Atlantic Casualty provided for Gustafson Excavating and Septic Systems in relation to the personal injury lawsuit that Defendant Aho filed against Defendant Gustafson.

Construing an insurance policy requires the same analysis as any other type of contract. *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). Construction and interpretation of an insurance contract is a question of law for the court. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348; 596 NW2d 190 (1999). An insurance policy should be read and interpreted as a whole, giving effect to each of its provisions. *Fragner v American Comm Mut Ins Co*, 199 Mich App 537; 502 NW2d 350 (1993).

Whether a contract term is ambiguous is a question of law for the court to determine. *Profit Pet v Arthur Dogswell, Ltd* 603 F3d 308 (6th Circuit 2010), cert den 129 S Ct 299, 555 US 887, 172 LEd2d 151. A contractual provision may be ambiguous if it irreconcilably conflicts with another provision, or if it is equally susceptible to more than one meaning. *Royal Property Gp, LLC v*

Prime Ins Syn, 267 Mich App 708, 715; 706 NW2d 426 (2005). Every word, clause and phrase of an insurance contract must be construed in harmony, to avoid rendering any part of the contract surplusage or nugatory. *Id.* Contracts are to be interpreted to avoid absurd or unreasonable results. *Hastings Mut Ins Co v Safety King, Inc*, 286 Mich App 287; 778 NW2d 275 (2009).

Coverage

The contract in question provides the following coverage language in Section I-Coverages, Coverage A, Bodily Injury and Property Damage Liability, found at page 1 of 14 (CG 00 01 10 01):

We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" . . . to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any suit seeking damages for "bodily injury" . . . to which this insurance does not apply.

This coverage provision is subject to the exclusions in Coverage Part A as well as the Combination Endorsement (AGL-CO (8/09)), also a part of the insurance contract. The Combination Endorsement contains the following relevant language:

EXCLUSIONS/LIMITATIONS-COMBINATION ENDORSEMENT- CONTRACTORS

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

EXCLUSION OF INJURY TO EMPLOYEES, CONTRACTORS AND EMPLOYEES OF CONTRACTORS

Exclusion e. Employer's Liability of Coverage A. Bodily Injury . . . Liability (Section I-Coverages) is replaced by the following:

This insurance does not apply to:

- (ii) "bodily injury" to any "contractor" for which any insured may become liable in any capacity: . . .

This exclusion applies to all claims and "suits" by any person or organization for damages because of "bodily injury" to which this exclusion applies including damages for care or loss of services.

As used in this endorsement, "contractor" shall include but is not limited to any independent contractor or subcontractor of any insured, any general contractor, any developer, any property owner, any independent contractor or subcontractor of any general contractor, any independent contractor or subcontractor of any developer, any independent contractor or subcontractor of any property owner and any and all persons working for or providing services and or materials of any kind for these persons or entities mentioned herein. [court's underlining for emphasis]. Page 4 of 10 AGL -055 8/05.

It is this language upon which Atlantic Casualty relied to deny coverage or a duty to defend Gustafson against the personal injury lawsuit filed by Aho. Atlantic Casualty states, at page 8 of its brief, that it "has no duty to defend or provide coverage for this accident because the policy excludes coverage for bodily injury to any "contractor", which includes the property owner by its express terms." In response, Defendants contend that the policy language "any property owner" is ambiguous and alternatively, if Atlantic Casualty's interpretation of the language is upheld, then the insurance policy is illusory because, by Defendants' proffered definition of "any property owner", no one can qualify for bodily injury coverage and Defendant Gustafson was charged a fee for insurance coverage but received nothing in return.

The Michigan Supreme Court provided the following guidance in determining the issues now before the court in *Heniser v Frankenmuth Mut Ins Co*, 449 Mich 155, 172; 534 NW2d 502, 510 (1995):

To determine whether an insured is entitled to insurance benefits, we employ a two-part analysis. First, we determine if the policy provides coverage to the insured. If it does, we then ascertain whether that coverage is negated by an exclusion. [cite omitted] It is the insured's burden to establish that his claim falls within the terms of the policy. [cite omitted] . . . Policy exclusions are based on the presumption that the insured already has established that the policy covers the [risk] in question. The question then becomes whether this particular [claim] is excluded from coverage for some reason.

The policy in question provides coverage for "those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" . . . to

which this insurance applies." "Bodily injury" is defined in section V of the policy, page 11 of 14 CG 00 01 10 01 as:

bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

The injury to Mr. Aho's eye satisfies this definition of bodily injury, so the first part of the *Heniser* analysis, establishing coverage for the claim asserted in the Aho lawsuit, is accomplished. It must now be ascertained whether such coverage is negated by an exclusion.

Exclusion

Atlantic Casualty relies on the following exclusion, contained at page 4 of 10, AGL-055 8/05, AGL-CO 09/09 to deny coverage in this matter:

This insurance does not apply to:

• • •

(ii) "bodily injury" to any "contractor" for which any insured may become liable in any capacity. . .

As used in this endorsement, "contractor" shall include but is not limited to any independent contractor or subcontractor of any insured, any general contractor, any developer, any property owner, any independent contractor or subcontractor of any general contractor, any independent contractor or subcontractor of any developer, any independent contractor or subcontractor of any property owner, and any and all persons working for or providing services and or materials of any kind for these persons or entities mentioned herein.

Because Defendant Aho was the property owner on whose property the insured, Defendant Gustafson, was working when Mr. Aho was injured, the plain language of this exclusion would seem to preclude a valid claim under the policy.

In opposition to this position, Defendants contend that the policy language is ambiguous and that it provides for an illusory contract – either position requiring this court to find that Atlantic Casualty has a duty to defend and indemnify Defendant Gustafson against any liability he may be found to have

in the *Aho v Gustafson* matter pending in this court which arose out of Mr. Aho's bodily injury while Defendant Gustafson was performing contracted services on Mr. Aho's property

Ambiguity

Defendants contend that the exclusion seeking to prevent coverage for bodily injury to contractors is ambiguous for two reasons: 1) the definition of "contractor" contained in the policy exclusion conflicts with the Black's Law Dictionary definition and includes any property owner which is overly broad; and 2) the phrase "any property owner" is not defined in the policy and the Random House Webster's College Dictionary definition of these three words would preclude coverage for anyone who owns anything (in other words, everyone), creating ambiguity. Plaintiff contends that the language in the exclusion is clear on its face and the policy definition is not required to match the Black's Law Dictionary definition. Plaintiff also contends that Defendants' proposed definition of "any property owner" is overbroad and the plain meaning of the phrase, read in the context of the policy as a whole describes Mr. Aho, as the owner of the property on which Defendant Gustafson performed the work covered by the policy, not anyone who owns anything.

An insurance policy must be read as a whole to harmonize and give proper effect to its provisions. *Fragner v. American Comm Mut Ins Co*, 199 Mich 537; 502 NW2d 350 (1993). A court should not read ambiguities into an insurance policy where none exist. *Michigan Millers Mut Ins Co v Bronson Plating Co*, 445 Mich 558, 567; 519 NW2d 864 (1994). Words and phrases appearing in bold print or quotations in the policy under consideration are given special meaning within the contract. See p. 1 of 14, CG 00 01 10 01. If a term is not defined in the policy, that does not make it ambiguous.

Henderson v State Farm Fire and Cas Co, supra.

Terms used in an insurance policy that are not expressly defined are given their commonly used meaning. *Group Ins Co v. Czopek*, 440 Mich 590, 596; 489 NW2d 444 (1992). A contractual provision may be ambiguous if it, irreconcilably conflicts with another contractual provision or if it is reasonably susceptible to more than one meaning. *Royal Property Gp, LLC v Prime Ins Syn, Inc, supra*. Ambiguities in contracts should be construed against the drafter. *Royal Ins Co of America v. Orient Overseas Container Line, Ltd.* 525 F3d 409 (6th Circuit 2008) cert den 129 S Ct 229, 555 US 887, 172 Led 2d 151. Contracts are to be interpreted to avoid absurd or unreasonable conditions and results. *Hastings Mut Ins Co v Safety King*, 286 Mich App 287; 778 NW2d 275 (2009).

"Contractor"

The definition of "contractor" that Atlantic Casualty used in the coverage exclusion under discussion is not required to match the Black's Law Dictionary definition cited by Defendants. Failure to do so does not make the policy definition ambiguous. Defendants contend that including "any property owner" in the definition of contractor in the exclusion "irreconcilably conflicts" with the policy's Declarations page which provides coverage for damages arising out of Gustafson's excavating operations because those services are provided for property owners. Defendant is correct to read the exclusion provision together with the rest of the policy, but such reading does not make the plain language of the definition of "contractor" ambiguous. In essence, Atlantic Casualty has excluded from bodily injury coverage under this policy those people connected with a commercial project: the Developer, if any; the General Contractor, if any; the property owner and all independent contractors, subcontractors, workers, material suppliers or anyone expected to be present on a jobsite. Those who would be covered are persons not ordinarily expected to be

present (and therefore less aware of what is going on) on a jobsite such as adjoining property owners; members of the general public; traffic on adjoining streets, roads or highways; trespassers; invitees or licensees, to name a few. When reading this policy as a whole, in the context of commercial projects to which the Commercial General Liability Policy would apply, the Court does not find that the policy was rendered ambiguous by including the term "any property owner" in the definition of "contractor". Similarly, the definition of "any property owner", when read in the context of the Commercial General Liability Policy as a whole, applies directly to Mr. Aho in the present circumstances, as the owner of the property upon upon which Defendant Gustafson was performing excavation services. As such, the *Aho v Gustafson* suit presently pending before this court is excluded from coverage under the Commercial General Liability Policy at issue in this matter.

"Any Property Owner"

As discussed somewhat above, the term "any property owner" included in the definition of "contractor" in the bodily injury coverage exclusion presently under review is not specifically defined in the policy. In such circumstances, it is necessary for the court to give these words their plain and ordinary meaning, in the context of the policy as a whole, in a manner that avoids absurd or unreasonable results. *Hastings, supra*. Reading the phrase "any property owner" together with the other categories of persons or entities generally and reasonably found on a construction site, all of whom are collectively defined as "contractors" in this policy, employs a concept commonly used in statutory construction known as *ejusdem generis*, a latin term meaning "of the same kind". It is employed when a list of specific classes of people or things is followed by general words. In such instance the general words are not to be given their broadest interpretation, but are held

to apply to the same general kind or class as those specifically listed. Black's Law Dictionary online. As an example, a list of automobiles, trucks, tractors, motorcycles and other motor-powered vehicles would not include airplanes, because the specified vehicles provided only land-based transportation. Nolo Plain-English Law Dictionary, Cornell University Law School. This concept is consistent with the reading of the phrase "any property owner" given by the court, above, and would exclude the overly broad definition proposed by Defendants, which would apply to anyone who owned anything. Defendants' hyper-technical reading of the phrase would lead to absurd and unreasonable conclusions that neither party would have intended when making the contract. The court will not read absurdities into a contract to render it ambiguous.

Illusory contract

Defendants contend that Plaintiff's interpretation of the coverage exclusion at issue in this case causes the Commercial General Liability Policy currently under review to be an illusory contract, which should be construed against Plaintiff to impose a duty to defend and indemnify against the *Aho v Gustafson* case also pending before this court. Defendants argue that Plaintiff's reading of its policy makes it an agreement in which Plaintiff gives as consideration for the premium Defendant has paid a promise that is so insubstantial as to impose no obligation. Defendants ask this court to apply the doctrine of illusory coverage in interpreting this policy, so that it is not merely a fiction to the insured. They ask the court to avoid interpreting the policy in such a way that an insured's coverage is never triggered and the insurer bears no risk. Defendant cites *Ile v Foremost Ins Co*, 493 Mich 915; 823 NW2d 426 (2012) (addressing uninsured and underinsured motorist coverage under the no-fault act) for the point that

“the Michigan Supreme Court will not declare an insurance policy “illusory” if there is any manner in which the policy could be interpreted to provide coverage. *Id* see also *Lattimore-Woegand v State Farm Mutual Automobile Ins Co*, 213 WL 5592891 (ED Mich)(slip copy).” Defendants’ Brief, page 13.

In the present case, Plaintiff’s policy interpretation excludes Defendant Aho’s bodily injury from coverage under the policy. While this interpretation does not meet Defendant Gustafson’s perceived expectations of coverage, the *Ile* court “expressly rejected the notion that the perceived expectations of a party may override the clear language of a contract.” *Supra*. But Plaintiff’s interpretation of the coverage exclusion, which this court adopts, as well, would cover Mr. Aho’s neighbor, as an adjoining property owner, should he or she file a bodily injury claim against Defendant Gustafson. Should such a case come before the court, the plain reading of the contract, in the context of those included in the definition of “contractor”, would lead this court to determine that a claim for bodily injury to an adjoining property owner, (passerby, trespasser, invitee, licensee, or a traveler on an adjacent street, road or highway) would not be excluded from coverage and Atlantic Casualty would be obligated to defend and indemnify Defendant Gustafson against a claim in such a scenario.

Finding that there are circumstances in which the policy could be interpreted to provide coverage, the court finds that the Commercial General Liability Policy between Atlantic Casualty and Defendant Gustafson is not illusory.

DECISION

It is the determination of this court that the Commercial General Liability Policy at issue in this matter, issued by Atlantic Casualty for Gary Gustafson d/b/a Gustafson Excavating and Sewer Systems does not provide coverage for the claim asserted by Defendant Andrew Aho in a personal injury action he filed against Defendant Gary Gustafson for bodily injury to Defendant Aho’s eye while Defendant Gustafson performed excavating services on Defendant

Aho's property. Coverage for this bodily injury claim was expressly excluded from coverage because Mr. Aho, as the owner of the property on which the job was performed, is expressly included in the definition of "contractor" as an excluded entity for whom bodily injury coverage is not provided, by the express terms of the contract, which this court finds to be neither ambiguous nor illusory.

Summary disposition is granted in favor of Plaintiff Atlantic Casualty such that a declaratory judgment of no duty to defend nor indemnify Defendant Gustafson against the claims asserted by Defendant Aho in Ontonagon Circuit Court Case Number 2013-000021-CZ shall enter.

Since this court did not find that the nonmoving parties were entitled to judgment, Defendants' counter motion for summary disposition is denied. This decision resolves all matters presently pending before the court in this case, making it a final order for purposes of appeal.

January 8, 2015
Date

Janis M. Burgess
Honorable Janis M. Burgess (P30253)
Presiding Circuit Court Judge

PROOF OF SERVICE

I CERTIFY THAT A COPY OF THIS INSTRUMENT WAS SERVED UPON THE ATTORNEYS OF RECORD AND/OR ALL INTERESTED PARTIES BY MAILING IT TO THEM AT THEIR RESPECTIVE BUSINESS ADDRESSES AS DISCLOSED BY THE PLEADINGS. V. POSTAGE PREPAID ON

THE 9th DAY OF January 20 15 I DECLARE, UNDER PENALTY OF PERJURY, THAT THIS STATEMENT IS TRUE TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF

Jenece Erickson Deputy

EXHIBIT 4

STATE OF MICHIGAN
COURT OF APPEALS

ATLANTIC CASUALTY INSURANCE
COMPANY,

Plaintiff-Appellee,

v

GARY GUSTAFSON,

Defendant-Appellant,

and

ANDREW AHO,

Defendant.

FOR PUBLICATION
May 26, 2016
9:15 a.m.

No. 325739
Ontonagon Circuit Court
LC No. 2014-000055-CK

Before: GLEICHER, P.J., and SAWYER and M. J. KELLY, JJ.

SAWYER, J.

In this declaratory judgment action, the parties filed cross-motions for summary disposition, with the trial court granting plaintiff's motion and denying defendant's motion. Defendant Gustafson now appeals and we reverse and remand.

The facts are not in dispute. Defendant Gustafson (hereinafter "defendant") operates a business known as Gustafson Excavating and Septic Systems. He was hired by defendant Aho (hereinafter "the homeowner") to perform landscaping and drainage work around a pond on the homeowner's residential property. Defendant was insured under a commercial general liability policy issued by plaintiff.

The homeowner was watching defendant's employee clearing brush near the pond with a brushhog. A piece of debris flew from the brushhog, striking the homeowner in the eye, causing injury. The homeowner brought suit against defendant. Defendant contacted his insurance agent, who assured defendant that this type of incident was covered by the insurance policy. But, upon review by plaintiff, plaintiff determined that they had no duty to defend or indemnify because the loss came within a policy exclusion. Plaintiff then brought this action seeking declaratory relief.

The exclusion at issue is entitled “Exclusion of Injury to Employees, Contractors and Employees of Contractors” and provides as follows:

This insurance does not apply to:

* * *

(ii) “bodily injury” to any “contractor” for which any insured may become liable in any capacity:

* * *

As used in this endorsement, “contractor” shall include but is not limited to any independent contractor or subcontractor of any insured, any general contractor, any developer, *any property owner*, any independent contractor or subcontractor of any general contractor, any independent contractor or subcontractor of any general developer, any independent contractor or subcontractor of any property owner and any and all persons providing services or materials of any kind for these persons or entities mentioned herein.

In short, plaintiff takes the position that, because the homeowner is “any property owner,” he comes within the definition of “contractor” and, therefore, comes within the exclusion clause for contractors. The trial court agreed, but we do not.

First, the relevant standard of review was summarized by our Supreme Court in *Wilkie v Auto-Owners Ins Co*:¹

The proper interpretation of a contract is a question of law, which this Court reviews de novo. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002). The same standard applies to the question of whether an ambiguity exists in an insurance contract. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999). Accordingly, we examine the language in the contract, giving it its ordinary and plain meaning if such would be apparent to a reader of the instrument.

The interpretation of this particular insurance contract clause appears to be a question of first impression in this state, though it has been addressed elsewhere. Defendant relies on two cases from other jurisdictions. The first, an unpublished decision of the Connecticut Superior Court, *Turano v Pellaton*,² is the closer of the two factually. In that case, the plaintiff had hired one of the defendants to do work in his basement. The plaintiff was injured when he fell going down the basement stairs because of a step that had been removed and not replaced, nor was he warned about the missing step. Our plaintiff in this case, Atlantic Casualty, also insured one of

¹ 469 Mich 41, 47; 664 NW2d 776 (2003).

² 2014 Conn Super Lexis 146.

the subcontractors in the *Turano* case. Atlantic Casualty denied coverage on the same basis that it is doing so in the case at bar: that because Turano was “any property owner,” he came within the definition of “contractor” and, therefore, the same policy exclusion at issue here applied to exclude coverage in that case. The Connecticut court disagreed, concluding that the heading of “Exclusion of Injury to Employees, Contractors and Employees of Contractors” limited the language which follows to situations where the insured has employed a third party to provide services to the insured, not to customers/property owners.³ Specifically, it noted that “this heading seems to envision situations involving employment or, more specifically, where the insured hires or employs a third party to perform services that assist the insured to perform jobs.”⁴

The other case is a published decision of the Seventh Circuit authored by Judge Posner, *Atlantic Casualty Ins Co v Paszko Masonry, Inc.*⁵ The facts in *Paszko* are somewhat different than in our case and, while plaintiff relied upon the same exclusionary clause in that case, a different portion of the exclusion was at issue. In the underlying lawsuit, the injured party, Robert Rybaltowski, brought an action against four companies, only one of whom, Paszko, was insured by plaintiff. The other three defendants argued that they were covered as well as additional insureds.⁶ The various defendants worked on a construction project involving the construction of an apartment building. Rybaltowski worked for a waterproofing company, Raincoat Solutions, that had submitted a bid to the general contractor, Prince Contractors (one of the defendants claiming to be an additional insured), to perform caulking work. Prince accepted the bid, subject to its advance approval of the color of the caulk and of the competency of the caulker. Thus, Rybaltowski was sent by Raincoat to the job site to demonstrate his skill by caulking a few windows; Raincoat was not expected to be paid for this work. After completing the demonstrating, but while still at the job site, a beam fell and struck Rybaltowski. It was only afterwards that a contract was signed between Prince and Raincoat.⁷

Plaintiff denied coverage, relying upon the same exclusion at issue in our case, though the focus in *Paszko* is on the later reference to “providing services . . . of any kind” to Prince.⁸ In

³ *Slip op* at 10-11.

⁴ *Id.* at 10.

⁵ 718 F3d 721 (CA 7, 2013). We note that plaintiff relies on an earlier, unreported case from the Northern District of Illinois, *Atlantic Casualty Ins Co v Alanis Development Corp* (No. 09 C 6657, filed January 25, 2011). While the fact situation in the district court case is closer to those in the case at bar, we place greater reliance on the more recent published decision of the Seventh Circuit.

⁶ *Paszko*, 718 F3d at 722. The issue of whether they were additional insureds was unresolved in the trial court and was not an issue on appeal, though the court noted that it could be an issue on remand. *Id.*

⁷ *Id.* at 722.

⁸ *Id.* at 723.

his opinion, Judge Posner was very critical of the language used in the contract: "The exclusion is poorly drafted. The term 'contractor' is exemplified rather than clearly defined."⁹ The court also noted how broad and unusual the exclusionary clause was.¹⁰

We don't understand the attraction of an insurance policy such as Atlantic's that contains such a broad exclusion; a Google search suggests that the exclusion is rare, and maybe it is confined to policies issued by Atlantic. Still, broad as it is, the exclusion does not render coverage illusory. Nor can we say that it can't be as broad as Atlantic believes because then no one would buy the policy. But we still must decide *how* broad it is. And resolving ambiguity as we must against the insurer, we conclude that it is not broad enough to embrace the accident to Rybaltowski.

This reference to whether the portion of the clause at issue in *Paszko* rendered the policy illusory is interesting. The court had a few paragraphs earlier rejected such a conclusion because, even under plaintiff's broad reading, it would be inapplicable to passersby and others "who might be injured at a construction site without being involved in the construction."¹¹ In our case, such a conclusion could not be so easily reached. While the *Paszko* court could easily note any number of persons who would not fall into the category of persons who supply services or materials, and would be a "contractor" under plaintiff's argument for a broad definition in that case, it is not so easy in this case with the term "any property owner." If viewed on its own, that term would include virtually everyone in the world; even the poorest person at least owns the clothes on his back, thus making him a "property owner" and, therefore, presumably a "contractor" under a broad reading of the statute. Indeed, the trial court was able to reject the argument that the clause renders the policy illusory only after adopting plaintiff's more limited interpretation of "any property owner" as meaning the owner of the property upon which the work is being performed.

Perhaps this is why plaintiff rejects the argument that "any property owner" means literally that. Plaintiff admits that this would be an absurd interpretation. Plaintiff suggests that the only "reasonable" interpretation of the phrase would be that it means the owner of the real property upon which the insured is performing work. While we agree that to interpret the phrase "any property owner" to mean anyone who owns any type of property, thus encompassing virtually the entire world (except perhaps for a newborn baby) and rendering the policy illusory, we fail to see how it leads us to plaintiff's more specific interpretation. But more critical at this

⁹ *Id.*

¹⁰ *Id.* at 725.

¹¹ *Id.* at 724. But the court does suggest that if an interpretation of an exclusion is so broad that it would render it implausible that anyone would purchase the policy, that is reason to doubt the interpretation. *Id.*

juncture, plaintiff's argument establishes an admission that the term is ambiguous and, therefore, in need of interpretation; but we reject plaintiff's proposed interpretation.¹²

In reaching its conclusion that the definition of "contractor" and its inclusion of the phrase "any property owner" covers the injured party in this case, the trial court relied upon the principle of *ejusdem generis* and that the common connection between the terms in the contract is that they cover "persons or entities generally and reasonably found on a construction site" (Tr Ct opinion, p 10.) There are problems, however, with this analysis. First, the principle of *ejusdem generis* does not apply here because we are not called upon to interpret the meaning of a general term that falls at the end of a list of specific terms. As explained in *Reading Law: The Interpretation of Legal Texts*,¹³ the general term must follow the specific terms (of which there must be two or more). Thus, this rule of interpretation would only apply in this context to interpreting the last clause of the exclusion, the one which reads "any and all persons providing services or materials of any kind for these persons or entities mentioned herein." While that is the clause which was at issue in *Paszko*, it is not at issue in this case.

The appropriate interpretative canon to employ here would be the associated-words canon, or *noscitur a sociis*. This principle says that when several words "are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar. The canon especially holds that 'words grouped in a list should be given related meanings.'" ¹⁴ Undoubtedly, were the trial court to apply this rule of interpretation, it would have reached the same conclusion that the "related meanings" are those individuals or entities that are likely to be found on a construction site. We disagree. Rather, we would conclude that the relationship between the categories listed in the exclusion are those who are being compensated, or who otherwise have a commercial interest,¹⁵ for being on the job site. Or, as the Connecticut court put it in *Turano*, the "language employed in the heading is not broad enough to encompass the situation of a customer/property owner. Accordingly, it should follow that everything that falls under this heading should reflect the employment situation."¹⁶ That is to say, the contractor, any subcontractors, or any vendors supplying materials or services, or who otherwise are involved from a commercial standpoint. This would lead to a very reasonable conclusion about the meaning and purpose of the clause: to avoid the prospect that a commercial entity, that would (or at least should) have its own

¹² It should be noted that we are not suggesting that plaintiff could not write an exclusionary clause that excludes the property owner upon whose real property the insured is performing work. Rather, we merely conclude that plaintiff has not done so with the clause before us.

¹³ Scalia and Garner, *Reading Law: The Interpretation of Legal Texts* (Thomson/West, 2012), pp 202-205,

¹⁴ Scalia, *id.* at 195, quoting *Third Nat'l Bank in Nashville v Impact Ltd*, 432 US 312, 322 (1977).

¹⁵ Such as the developer of a commercial project.

¹⁶ *Turano*, *slip op* at 10-11.

commercial liability policy from tagging onto the one issued by plaintiff to a particular commercial customer. Indeed, Judge Posner addresses this very issue in *Paszko*.¹⁷ Ultimately, it led to the court's conclusion that the "interpretation that services are not provided until the contractor . . . begins to do compensated work on the project" was as plausible as the interpretation that a "contractor" is anyone in the construction business regardless whether he was rendering a service at the time of injury.¹⁸

Similarly, we think an interpretation that "any property owner" refers to someone, or some entity, who is commercially involved in the work being done is at least as plausible, indeed more so, as the interpretation that a residential homeowner falls within the category of "contractor" merely because work is being done on the owner's property. Of course, this interpretation necessitates being able to identify potential members of the category of "any property owner," and which falls within the more general category of persons or entities that have a commercial involvement in the project that gives rise to the injury, in order to give that phrase meaning. But that is easily enough done. As defendant suggests, it could easily refer to owners of equipment used in the project. For example, if in this case the brushhog were rented rather than owned by defendant, then the injured party might have sued the rental company as well and the exclusion would operate to prevent the rental company from seeking coverage under the policy that plaintiff issued to defendant. Rather, the rental company could reasonably be expected to have its own commercial liability policy to provide a defense and indemnification in such a situation. Similarly, a "developer," who is also listed in the definition of "contractor" (and who may or may not also be the owner of the property upon which the work is being performed) would be expected to carry his own commercial liability insurance (and, for that matter, workers' compensation insurance for any employees).

Plaintiff suggests that defendant's argument amounts to asking this Court to interpret the policy based upon defendant's "reasonable expectations," a rule of interpretation that plaintiff argues our Supreme Court rejected in *Wilkie v Auto-Owners Ins Co*.¹⁹ But plaintiff overreaches in its reliance on *Wilkie*. While it is true that *Wilkie* did hold "that the rule of reasonable expectations has no application in Michigan,"²⁰ to merely stop at that point tells only half the story. Rather, *Wilkie*²¹ drew a distinction between ambiguous and unambiguous contracts, holding that the rule has no application to interpreting *unambiguous* contracts:

The rule of reasonable expectations clearly has no application to unambiguous contracts. That is, one's alleged "reasonable expectations" cannot supersede the clear language of a contract. Therefore, if this rule has any

¹⁷ See *Paszko*, 718 F3d at 724.

¹⁸ *Id.* at 725.

¹⁹ 469 Mich 41, 60-63; 664 NW2d 776 (2003).

²⁰ *Id.* at 63.

²¹ *Id.* at 60.

meaning, it can only be that, if there is more than one way to reasonably interpret a contract, i.e., the contract is ambiguous, and one of these interpretations is in accord with the reasonable expectations of the insured, this interpretation should prevail. However, this is saying no more than that, if a contract is ambiguous and the parties' intent cannot be discerned from extrinsic evidence, the contract should be interpreted against the insurer. In other words, when its application is limited to ambiguous contracts, the rule of reasonable expectations is just a surrogate for the rule of construing against the drafter.

That is, in the context of interpreting ambiguous contracts, it is merely a different name for the *contra proferentem* doctrine.²² Thus, *Wilkie* really is saying only that the rule of reasonable expectations serves no purpose. An unambiguous contract has no need of interpretation and, with ambiguous contracts, it is merely a different name for the *contra proferentem* doctrine. Having already concluded that the provision at issue here is ambiguous, this doctrine, under whichever name, leads us to conclude that it must be interpreted against plaintiff. That is, we believe that the better interpretation of "any property owner," given that it is included in a list that otherwise only includes those that have a commercial interest (or their employees), is that it does not include those without a commercial interest in the project, namely, in this case, the residential homeowner. Or, as Judge Posner ultimately reasoned in *Paszko*, when faced with two plausible interpretations, we must select the one that favors the insured and, therefore, the interpretation that excludes a residential homeowner from the definition of "contractor" "thus rules the case."²³

Reversed and remanded to the trial court for entry of summary disposition in favor of defendant. We do not retain jurisdiction. Defendant may tax costs.

/s/ David H. Sawyer
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly

²² *Id.* at 61.

²³ *Paszko*, 718 F3d at 725.